16-609

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~357~~. 88

JAMES C. JONES AND JACOB WEIL, PARTNERS AS JONES AND WEIL, PLAINTIFFS IN ERROR,

vs.

BENJAMIN F. SIMPSON.

No. ~~358~~. 89

JAMES C. JONES AND JACOB WEIL, PARTNERS AS JONES AND WEIL, PLAINTIFFS IN ERROR,

vs.

GEORGE HOISINGTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED OCTOBER 10, 1882.

SUPREME COURT OF THE UNITED STATES.

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No. 357.

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1 UNITED STATES OF AMERICA, } ss:
District of Kansas, }

In the Circuit Court of the United States for the District of Kansas.

JAMES C. JONES & JACOB WEIL, Partners as Jones & Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON and JOHN H. MAHAN, Defendants. } 3301.

Be it remembered that on this day, to wit, December 21, 1880, the said plaintiff filed in the clerk's office of said court their petition and precipe in said entitled cause, which petition and precipe, with the endorsements thereon, are in the words and figures following, to wit:

Petition.

In the Circuit Court of the United States for the District of Kansas.

JAMES C. JONES and JACOB WEIL, Partners as Jones & Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON and JOHN H. MAHAN, Defendants. } 3301.

2 The said James C. Jones and Jacob Weil, partners as Jones & Weil, who are each citizens of the State of Colorado, complain of the said Benjamin F. Simpson and John H. Mahan, who are each citizens of the State of Kansas, and for cause of action, saith: That on the 4th day of December, A. D. 1880, they, the said plaintiffs as such partners, were the owners of and in possession of the following-described goods and chattels, to wit: 13 valises, 12 pairs men's boots, 14 cases men's boots, 17 trunks, 73 boxes of collars, 63 boxes of cuffs, 329 linen collars, 1 lot of jewelry, 2 doz. sleeve holders, 22 other valises, 140 shirts and drawers, 190 p'r suspenders, 140 p'r other boots, 5 p'r rubber boots, 7 p'r rubber overs, 6 p'r other overs, 21 p'r shoes, 19 coats, 111 p'r pants, 3 ulsteret*h*s, 34 vests, 1 boy's suit, 6 overcoats, 13 coats, 2 other trunks, 38 other p'r suspenders, 72 pair of gloves, 69 ties, 73 pairs of socks, 6 knit jackets, 7 comforters, 15 other p'r pants, 4 coat- & vests, 3 suits, 48 p'r of gloves, 17 p'r of mitts, 78 overalls and waists, 172 shirts, 69 other s. & dr. (shirts & drawers), 267 other p'r socks, 2 doz. pulse warmers, 8 other p'r socks, 161 p'r gloves, 1 lot of straw hats, 128 s. & dr. (other shirts & drawers), 12 bows, 308 handkerchiefs, 167 other ties, 19 other p'r socks, 38 other boys' suits, 282 caps, men's boys' and & women's 17 other trunks, 11 other valises, 53 other pair boots, 2 rubber coats, 1 lot of summer goods, 66 p'r gloves, 33 other p'r mitts, 136 other s. & dr. (shirts and drawers,) 108 blue flan-
3 nel shirts, 56 other boys' suits, 410 hats, 225 other shirts, 47 blankets, 80 other s. & dr. (shirts and drawers), 50 overcoats, 64 other hats, one other coat, 162 other suits, 65 other overcoats, 35 coats & vests, 9 other coats, 10 blouses, 6 pr. overalls, 426 pair of other socks, 17 other ties, 93 scarfs, 1 iron safe, 113 other shirts, 65 overalls, 31 pr. boys' overalls, 830 paper collars, 536 linen collars,

110 pr. linen cuffs, 7 linen dusters, 2 other suits, 1 pr. pants & vest, 1 pr. doeskin pants, 2 other rubber coats, 8 black vests, 19 game bags, 1 gum cap, 13 pr. plow shoes, 9 white vests, 1 pr. linen pants, 11 pr. arctics, 19 pr. gum boots, 13 pr. other boots, 2 pr. pants, 2 pr. other pants, 1 other shirt, 2 other pr. overalls, 21 other trunks, 29 other valises, 7 woolen jackets, 1 lot neckwear, collars, & jewelry; 44 other shirts, 40 other pr. gloves, 1 lot of staw hats (other), 15 other dusters, 5 other linen coats, 1 alpaca coat, 5 other dusters, 9 other coats, 215 other scarfs, 43 pr. other suspenders, 20 pr. other pulse warmers, 214 other ties, 16 boxes other cuffs, 160 boxes other collars, 105 other caps, 3 pr. slippers, 1 other lot of jewelry, 28 pocket-books, 30 knives, 3 sleeve holders, 5 pr. other gloves, 1 pr. husking gloves, 5 other ties, 2 other h'dk'fs, 19 vests, 1 lot of fixtures, 367 other s. & dr's (shirts and drawers), 1 lot of bows, 48 *48* other bows, 4 other scarfs, 8 pr. other gloves, 1 lot of handkerchiefs, 34 other h'dk'fs, 28 pr. other mitts, 96 pr. other suspenders, 10 other hats, 1 other overcoat, 171 other caps, 594 other hats, 132 pr. other gloves,
126 other shirts, 5 other suits, 1 other coat & vest, 69 other
4 pants, 15 other boys' vests, 54 other men's vests, 12 other suits,
3 other pr. mitts, 157 pr. of other gloves, 32 other suits, 1 other coat and vest, 37 other coats, 76 other overcoats, 2 kilts, 95 other suits, 18 other overcoats, 2 other suits, 1 other pr. pants, 18 other coats, 1 lot of children's overcoats, and of the aggregate value of thirteen thousand nine hundred and eighty $\frac{1}{100}$ dollars.

And the said plaintiffs further aver that they, the said defendants, on said day, in said district, and in the State of Kansas, wrongfully took and carried away, and converted the same to their own use, to the damage of the plaintiffs twenty thousand dollars, and special damages as follows, to wit: Attorney's fees in this case, $1,000; 6 trips from Las Animas, Colorado, to Kansas, to look after the attached property and business growing out of the seizure of the goods, & expenses, $600; wages to Paul Goldsmith, $80; wages to E. C. Adams as clerk, $40; he at paid Bonebrake for building to store goods, $10; loss of time in attending to the attachment suits, & by reason of the seizure of the goods by defendants, 40 days, $300. Wherefore the plaintiff claims judgment against the said defendants for the sum of twenty thousand dollars, the damages sustained by reason of the premises, and costs of suits.

J. G. MOHLER, CASE & FREDRICK,
Att'ys for Pl'ffs.

Precipe.

5 The clerk will issue a summons for defendants, Benjamin F. Simpson and John H. Mahan, directed and returnable according to law. Endorse summons: "If default be made, plaintiff will take judgment for $20,000.00, interest and costs.

J. G. MOHLER, CASE & FREDRICK,
Att'ys for Plaintiff.

Dec. 21st, 1880.

TOPEKA, *Dec.* 21*st*, 1880.

Nathan G. Holt is hereby appointed to serve process on said defendant, B. F. Simpson, in this case.

C. G. FOSTER, *Judge.*

Endorsed: No. 3301. Jones & Weil *vs.* Simpson *et al.* Pet. & prec. Filed Dec. 21, 1880. A. S. Thomas, clerk. J. G. Mohler, Case & Fredrick, att'ys.

Be it remembered that on this day, to wit, December 21st, 1880, the said plaintiffs filed in the clerk's office of said court their security for costs in said entitled cause, which security for costs, with the endorsements thereon, is in the words and figures following, to wit:

Security for Costs.

In the Circuit Court of the United States for the District of Kansas.

6 JAMES C. JONES and JACOB WEIL, Partners as Jones & Weil, Pl'fs,

vs.

BENJAMIN F. SIMPSON & JOHN H. MAHAN, Def'ts.

I enter myself security for costs in said case, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court. And in default of payment by the plaintiff of any costs ordered or adjudged to be paid by them, I hereby agree and stipulate that execution may issue against my property for any costs taxed against them or either of them.

W. E. WEIL.

Dated this 21 day of Dec., 1880.

Endorsed: No. 3301. Jones & Weil *vs.* Benjamin F. Simpson & John H. Mahan. Sec. for costs. Filed Dec. 21, 1880. A. S. Thomas, clerk. Approved Dec. 21, 1880. A. S. Thomas, clerk.

And on this day, to wit, December 21, 1880, the clerk of said court issued a summons in said entitled cause, which summons, with the return thereon, is in the words and figures following, to wit:

Summons.

DISTRICT OF KANSAS, *ss:*

Circuit Court of the United States of America.

7 United States of America to Nathan G. Holt, Greeting:

You are hereby commanded to notify Benjamin F. Simpson that he has been sued by James A. Jones & Jacob Weil, partners as Jones & Weil, in the circuit court of the United States for the district of Kansas, and that unless he answer by the twentieth day of January, A. D. 1881, the petition of the said James A. Jones & Jacob Weil, partners as Jones & Weil, against him and John H. Mahan, filed in the clerk's office of the said court, such petition will be taken as

true, and judgment rendered accordingly. You will make due return of this writ on the thirty-first day of December, A. D. 1880.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Topeka, in said district, this twenty-first day of December, A. D. 1880.

[SEAL.] A. S. THOMAS, *Clerk.*

Suit brought for the recovery of money.

Amount claimed, $20,000, interest and costs.

J. G. MOHLER & CASE & FREDRICH,
Attorneys for Plaintiffs.

U. S. Marshal's Return.

DISTRICT OF KANSAS, *ss:*

Received the within writ Dec. 21, 1880. Returned not served, by order of pl'tiffs' attorneys.

NATHAN G. HOLT.

8 Endorsed: No. 3301. Circuit court of the United States, district of Kansas. Jones & Weil *vs.* Benjamin F. Simpson & John H. Mahan. Summons. Issued Dec. 21, 1880; returnable Dec. 31, 1880. Filed Jan. 10, A. D. 1881. A. S. Thomas, clerk. J. G. Mohler & Case & Fredrich, attorneys for plaintiffs.

And on this day, to wit, December 21st, 1880, the clerk of said court issued a summons in said entitled cause, which summons, with the marshal's return thereon, is in the words and figures following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

The United States of America to the marshal of the district of Kansas, Greeting:

You are hereby commanded to notify John H. Mahan that he has been sued by James A. Jones & Jacob Weil, partners as Jones & Weil, in the circuit court of the United States for the district of Kansas, and that unless he answer by the twentieth day of January, A. D. 1881, the petition of the said James A. Jones & Jacob Weil, partners as Jones & Weil, against him and Benjamin F. Simpson,

9 filed in the clerk's office of the said court, such petition will be taken as true, and judgment rendered accordingly. You will make due return of this writ on the thirty-first day of December, A. D. 1880.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Topeka, in said district, this twenty-first day of December, A. D. 1880.

[SEAL.] A. S. THOMAS, *Clerk.*

Suit brought for the recovery of money. Amount claimed $20,000.00, interest & costs.

J. G. MOHLER & CASE & FREDRICH,
Attorneys for Plaintiffs.

U. S. Marshal's Return.

DISTRICT OF KANSAS, *ss:*

Received the within writ December the 22d, 1880, and served the same on the within named defendant, John H. Mahan, at Dickinson county, State and dist. of Kansas, Dec. 28th, 1880, by delivering to him personally a true and correct copy of this writ with all the endorsements thereon.

B. F. SIMPSON, *U. S. M.*,
By J. H. SMITH, *Deputy.*

Fees, hotel----	$2 00
R. R.----------	7 70
Service-------	2 00
	$11 70

Endorsed: No. 3301. Circuit court of the United States, district of Kansas. Jones & Weil *vs.* Benjamin F. Simpson & John H. Mahan. Summons. Issued Dec. 21st, 1880; returnable Dec.
10 31st, 1880. Filed Dec. 29th, A. D. 1880. A. S. Thomas, clerk. J. G. Mohler & Case & Fredrich, attorney's for plaintiffs.

And on this day, to wit, January 12, 1881, John H. Mahan, one of the defendants herein, by his attorney, filed in the clerk's office of said court his answer in said entitled cause, which said answer is in the words and figures following, to wit:

Answer of John H. Mahan.

In the Circuit Court of the United States for the District of Kansas.

JAMES C. JONES and JACOB WEIL, Partners as Jones & Weil, Pl'ffs,

vs.

BENJAMIN F. SIMPSON & JOHN H. MAHAN, Defendants.

Comes now the said John H. Mahan, defendant, and for answer to the petition of the said plaintiffs says he denies each and every, all and singular, the allegations and averments therein contained.

MAHAN & BURTON,
Att'ys for said Def'ts.

Endorsed: No. 3301. Jones & Weil *vs.* Benjamin F. Simpson & John H. Mahan. Answer of John H. Mahan. Filed Jan. 12th, 1881. A. S. Thomas, clerk. Mahan & Burton, att'ys.

11 And on this day, to wit, January 12th, 1881, Benjamin F. Simpson, one of the defendants herein, by his solicitors, filed in the clerk's office of said court his answer in said entitled cause which said answer is in the words and figures following, to wit:

Answer of Benjamin F. Simpson.

In the Circuit Court of the United States for the District of Kansas.

JAMES C. JONES and JACOB WEIL, Partners as Jones & Weil,
Plaintiffs,
against
BENJAMIN F. SIMPSON and JOHN H. MAHAN, Defendants.

Comes now the said Benjamin F. Simpson, and for answer to the petition of the said plaintiff says:

First Defense.

He denies each and every, all and singular, the allegations and averments in said petition contained.

Second Defense.

And for a second defense he says, at all the times mentioned in said petition, and before and since, he hath been, and yet is, United States marshal for the district of Kansas, and that on or about the —— day of December, 1880, there issued out of the clerk's
12 office of this court four certain writs of attachment at the several suits of H. Friend & Brother, W. E. Burlock & Company, May Brothers and Company, and Leibman & Schloss, against the goods and property of Gus. and Max S. Goldsmith, and that each of said writs was directed to this defendant as such U. S. marshal, and each thereof came into his hands [as] such marshal, and that by authority of said writs he seized a part of the goods described in the said petition as the property of said Gus. and Max S. Goldsmith, and that at the time of such seizure the said goods were liable so to be seized under said writs as the property of said Gus. and Max S. Goldsmith at the suits of said several parties in whose behalf they issued, as aforesaid, and that said attaching plaintiffs were creditors of said Gus. and Max S. Goldsmith.

MAHAN & BURTON,
Att'ys for said Def't.

Endorsed: No. 3301. Jones & Weil *vs.* Benjamin F. Simpson, John H. Mahan. Answer filed by Benjamin F. Simpson January 20th, 1881. Filed Jan. 12th, 1881. A. S. Thomas, clerk. Mahan Burton.

And on this day, to wit, Feb. 18th, 1881, the plaintiffs herein, by their attorneys, filed in the clerk's office of said court their
13 reply to the answer of Benjamin F. Simpson in said entitled cause, which said reply is in the words and figures following, to wit:

Reply to Answer of Simpson.

In the Circuit Court of the United States for the State and District of Kansas.

JAMES C. JONES & JACOB WEIL, Partners as Jones & Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON *et al.*, Defendants.

The plaintiffs, for reply to the answer of the defendant, Benjamin

F. Simpson, saith: That they deny each & every, all and singular, the averments & allegations therein contained.

CASE & FREDRICH & J. G. MOHLER,
Att'ys for Plaintiffs.

We consent that the above reply may be filed and used & treated as though filed in time.

PECK, RYAN & JOHNSON,
Att'ys for Simpson.

Endorsed: No. 3301. Jones & Weil *vs.* Simpson *et al.* Reply to Simpson's answer. Filed Feb. 18th, 1881. A. S. Thomas, clerk. Mohler & Case & Fredrich, att'ys.

And on this day, to wit, June 21, 1881, there was filed in the clerk's office of said court, in said entitled action, a stipulation
14 as to evidence, which said stipulation is in words and figures following, to wit:

Stipulation.

In the Circuit Court of the United States for the District of Kansas.

JAMES C. JONES and JACOB WEIL, Copartners as Jones & Weil,
Plaintiffs,
vs.
BENJAMIN F. SIMPSON and JOHN H. MAHAN, Defendants.

It is hereby stipulated and agreed that all depositions taken in the case of Jones & Weil, plaintiffs, *vs.* George Hoisington, defendant, now pending in this court, and numbered 177 on the trial docket of the June term 1881, of this court, may be read in evidence in this cause, the same as though they had been taken in this cause, subject to all other legal objections that *that* they were not taken in this cause.

J. G. MOHLER & A. H. CASE,
Att'ys for Pl'ffs.
MAHAN & BURTON,
Att'ys for Def'ts.

Endorsed: No. 3301. Jones & Weil *vs.* B. F. Simpson *et al.* Stipulation as to evidence. Filed June 21, 1881. A. S. Thomas, clerk.

15 And now on this day, to wit, June 22nd, 1881, in the June term of said court, in the record of the proceedings thereof in said entitled case is the following entry, to wit:

Journal Entry.

JONES & WEIL
vs.
BENJAMIN SIMPSON and JOHN H. MAHAN. } 3301.

JONES & WEIL
vs.
GEORGE HOISINGTON. } 3302.

Now come the plaintiffs in the above-entitled actions, by J. G.

Mohler & Case & Frederick, their attorneys, and the defendants in the above-entitled actions, by Mahan & Burton, and Peck, Ryan & Johnson, their attorneys, and thereupon these actions are consolidated for the purpose of trial. And to try the issues joined come a jury, to wit, J. B. Parrott, Wm. Whitehead, J. C. Bennett, J. C. Van Allen, W. W. Sargent, J. G. Miller, C. W. Green, W. H. Chase, John J. Hoffman, J. C. Embry, J. W. Tombs, & Thomas Newton, twelve good and lawful men of the body of the district of Kansas, who being duly empanneled, and sworn to well and truly try the matters submitted to them in these actions, and a true verdict given according to the law and evidence, and thereupon the trial of these
16 cases is proceeded with; and not being concluded at the hour of adjournment the jury are admonished by the court as to their duties herein, and the further hearing postponed until to-morrow.

And on this day, to wit, June 23rd, 1881, in the June term of said court, in the record of the proceedings thereof in said entitled actions is the following entries, to wit:

Journal Entry.

JONES & WEIL
vs.
BENJAMIN SIMPSON and JOHN H. MAHAN. } 3301.

JONES & WEIL
vs.
GEORGE HOISINGTON. } 3302.

Now come the parties herein same as on yesterday, and the jurors empanneled herein being called, and all being present, the trial of these causes is proceeded with, and not being concluded at the hour of adjournment the jurors were admonished by the court as to their duties herein, and the further hearing of these cases postponed until to-morrow.

Journal Entry.

JONES & WEIL
vs.
BENJAMIN SIMPSON and JOHN H. MAHAN. } 3301.

17 Now comes John H. Mahan, one of the defendants herein, and demurs to plaintiffs' evidence, which demurrer came on to be heard and was argued by counsel; upon consideration whereof it is ordered by the court that the demurrer be, and the same is hereby, sustained.

And thereupon it is by the court here considered, ordered, and adjudged that said defendant, John H. Mahan, go hence without day, and have and recover of and from Jones & Weil, plaintiffs herein, all his costs in this action expended, and that execution issue therefor.

And on this day, to wit, June 23rd, 1881, John H. Mahan, one of the defendants herein, by his solicitors, filed in the clerk's office of

said court his demurrer to the evidence in said entitled action, which said demurrer is in the words and figures following, to wit:

Demurrer.

In the Circuit Court of the United States for the District of Kansas.

JAMES C. JONES and JACOB WEIL, Copartners as Jones & Weil, Plaintiffs,

vs.

BENJAMIN F. SIMPSON and JOHN H. MAHAN, Def'ts.

18 This 23rd day of June, 1881, the said plaintiffs have rested their case; comes the said defendant, John H. Mahan, and demurs to the evidence of the said plaintiffs, and for cause of said demurrer says that the evidence of the plaintiffs is not sufficient in law to constitute any cause of action against —.

MAHAN & BURTON,
Att'ys for John H. Mahan.

Endorsed: No. 3301. Jones & Weil *vs.* Simpson *et al.* Demurrer of John H. Mahan to plaintiffs' evidence. Filed June 23, 1881. A. S. Thomas.

And on this day, to wit, June 24, 1881, in the record of the proceedings thereof in said entitled actions is the following entry, to wit:

Journal Entry.

JONES & WEIL
vs.
BENJAMIN F. SIMPSON and JOHN H. MAHAN. } 3301.

JONES & WEIL
vs.
GEORGE HOISINGTON. } 3302.

Now come the parties herein same as on yesterday, and the jury empanneled herein being called, and all being present, the trial of these causes is proceeded with; and the jury having
19 heard the evidence, arguments of counsel, and instructions of the court, retire, under the charge of a sworn bailiff, for deliberation.

And on this day, to wit, June 25th, 1881, in the June term of said court, in the record of the proceedings thereof, is the following entry, to wit:

Journal Entry.

JONES & WEIL
vs.
BENJAMIN F. SIMPSON. } 3301.

JONES & WEIL
vs.
GEORGE HOISINGTON. } 3302.

Now come the parties herein same as on yesterday, and the jury

came into court, and under the charge of their sworn bailiff, and report to the court that they are unable to agree upon a verdict herein. It is therefore ordered by the court that they are hereby discharged from the further consideration of these cases. On motion of plaintiffs it is further ordered by the court that they have leave to amend their petitions by interlineation, setting up special damages. Answer to stand, and these cases are continued to the next term hereof.

20 And on this day, to wit, December 12th, 1881, in the November term of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON and JOHN H. MAHAN, Defendants. } 3301.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant. } 3302.

Now come said plaintiffs in the above-entitled actions, by J. G. Mohler, A. H. Case, and J. S. Merritt, and said defendants, Benjamin F. Simpson and George Hoisington, by Mahan & Burton and Webb, Johnson & Ryan, their attorneys. And it appearing to the court the above actions are of like nature and relative to the same question, and to avoid unnecessary costs and delay, and that it is reasonable to do so, it is ordered by the court that said actions be, and they are hereby, consolidated for trial; and to try the issues joined came a jury, to wit, Chester Thomas, Jr., Allen Wilson, H. B. Clarke,
F. Charlesworth, S. W. McComb, Wm. Irvin, R. R. Roberts,
21 R. W. Smith, L. Pauley, C. W. Hamilton, C. F. Johnson, and W. S. Gile, twelve good and lawful men of the body of the district of Kansas, who being duly empanneled and sworn to well and truly try the matters submitted to them in this action, and a true verdict give according to the law and evidence, and thereupon the trial of this case is proceeded with. Whereupon R. R. Roberts, one of the jurors, states that his child is sick, and thereupon the parties consent that he be discharged, and that the trial proceeds with the remaining eleven jurors by consent of parties. And the trial not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein, and the further hearing postponed until to-morrow.

And on this day, to wit, December 13, 1881, in the November term of said court, in the record of the proceedings thereof in said entitled action is the following, to wit:

Journal Entry.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON and JOHN H. MAHAN, Defendants. } 3301.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant. } 3302.

22 Now come the parties herein same as on yesterday, and the jurors empanneled being called, and all being present except R. R. Roberts, excused, the trial of this cause is proceeded with; and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein, and the further hearing postponed until to-morrow.

And on this day, to wit, December 14th, 1881, in the November term of said court, in the record of the proceeding- thereof in said entitled action is the following entry, to wit:

Journal Entry.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON and JOHN H. MAHAN, Defendants. } 3301.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant. } 3302.

23 Now come the parties herein same as on yesterday, and the jury herein being called and all being present, the trial of this cause is proceeded with; and not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein, and the further hearing postponed until to-morrow.

And on this day, to wit, December 15, 1881, in the November term of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

JAMES C. JONES AND JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON AND JOHN H. MAHAN, Defendants. } 3301.

JAMES C. JONES AND JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant. } 3302.

Now come the parties herein same as on yesterday, and the jury

herein being called and all being present, the trial of this cause is proceeded with; and not being concluded at the hour of ad-
24 journment the jurors are admonished by the court as to their duties herein, and the further hearing postponed until tomorrow.

And on this day, to wit, December 16, 1881, in the November term of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

Journal Entry.

JAMES C. JONES AND JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON AND JOHN H. MAHAN, Defendants. } 3301.

JAMES C. JONES AND JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant. } 3302.

And now come the parties herein same as on yesterday, and the jury herein being called and all being present, the trial of this cause is proceeded with; and the jury having heard the evidence, arguments of counsel, and instructions of the court, retire, under the charge of a sworn bailiff, for deliberation.

25 And on this day, to wit, December 19, 1881, in the November term of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

Journal Entry.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON, and JOHN H. MAHAN, Defendants. } 3301.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant. } 3302.

Now come the parties, by their attorneys, and the jury herein having been kept together until it satisfactorily appears that there is no probability of their agreeing, it is ordered by the court that they be, and are hereby, discharged; and it is further ordered and directed by the court that said entitled actions be tried, commencing Tuesday, January 10th, 1882, at 10 o'clock a. m., and are hereby set down for trial for that time.

And on this day, to wit, January 10th, 1882, in the November term of said court, in the record of the proceedings in said
26 entitled action is the following entry, to wit:

Journal Entry.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON and JOHN H. MAHAN, Defendants. } 3301.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant. } 3302.

Now come said plaintiffs in the above-entitled actions, by J. G. Mohler, A. H. Case, and J. S. Merritt; and said defendants Benjamin F. Simpson and George Hoisington, by Mahan and Burton, their attorneys; and it appearing to the court that the above-entitled actions are of like nature and relative to the same question, and to avoid unnecessary costs and delay, and that it is reasonable to do so, it is ordered by the court that said actions be, and they are hereby, consolidated for trial; and to try the issues joined, come a jury, to wit, Joe Carris, Hiram Ward, John Winkler, C. J. Halstead, W. P. D. Flemming, G. P. Bates, J. C. Gordon, A. V. Auter, J. A.
27 McLaughlin, Wm. S. Curry, Albert Knowles, and W. H. Butterfield, twelve good and lawful men of the body of the district of Kansas, who being duly empanneled and sworn to well and truly try the matters submitted to them in this action, and a true verdict give according to the law and evidence; and thereupon the trial of this case is proceeded with; and not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein, and the further hearing postponed until to-morrow

And on this day, to wit, January 11th, 1882, in the November term of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON and JOHN H. MAHAN, Defendants. } 3301.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant. } 3302.

28 Now come the parties herein same as on yesterday, and the jurors empanneled herein being called, and all being present, the trial of this cause is proceeded with; and not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein, and the further hearing postponed until to-morrow.

And on this day, to wit, January 12th, 1882, in the November term of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON and JOHN H. MAHAN, Defendants. } 3301.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant. } 3302.

Now come the parties herein same as on yesterday, and the jurors empanneled herein being called, and all being present, the trial of this cause is proceeded with; and the jurors having heard
29 the evidence, arguments of counsel, and instructions of the court, retire, under the charge of a sworn bailiff, for deliberation.

And on this day, to wit, January 12th, 1882, in the November term of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Judgment.

JAMES C. JONES and JABOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON. } 3301.

Now come the parties herein and their attorneys and the jury herein come into open court, under the charge of their sworn bailiff, and render their verdict herein and special findings in the words and figures following, to wit:

"Circuit Court of the United States, District of Kansas.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON. } 3301.

We, the jury in said entitled action, find for the defendant Benjamin F. Simpson.

W. H. BUTTERFIELD, *Foreman.*"

"*Special Findings Asked by the Defendant.*

In the Circuit Court of the United States for the District of Kansas.

JONES and WEIL, Plaintiffs,

vs.

BENJAMIN F. SIMPSON & JOHN H. MAHAN, Defendants.

1rst. In making the sale of the goods in controversy, as claimed by the plaintiffs, did the Goldsmiths thereby intend to hinder
30 and delay their creditors?—Yes.

2nd. In making the sale of the goods in controversy, as claimed by the plaintiffs, did the Goldsmiths intend to defraud their creditors?—Yes.

3rd. At the time Jacob Weil, one of the plaintiffs herein, bought the goods in controversy for the plaintiffs, as plaintiffs claim, did said Jacob Weil know or have good reason to believe that the said Goldsmiths intended, by said sale, to hinder and delay their creditors?—Yes.

4th. At the time Jacob Weil so, as he claims, bought said goods, did he know, or have good reason to believe, that the said Goldsmiths intended by said sale to defraud their creditors?—Yes.

5th. At or before the time said Jacob Weil made said purchase as aforesaid had said Jacob Weil acquired knowledge of facts connected with the transactions of said G. and M. S. Goldsmith sufficient to put a reasonable man upon enquiry as to the intent of said Goldsmiths in making said sale?—Yes.

W. H. BUTTERFIELD, *Foreman.*"

It is now, therefore, by the court here considered, ordered, and adjudged that said defendant, Benjamin F. Simpson, go hence without day and have and recover of and from said plaintiffs, James C. Jones and Jacob Weil, partners as Jones and Weil, his costs in this action expended, and that execution issue therefor.

Thereupon the plaintiffs give notice of a motion for a new trial.

31 And on this day, to wit, January 12th, 1882, the plaintiffs herein, by their attorneys, filed in the clerk's office of said court their motion for a new trial, which motion is in words and figures following, to wit:

Motion for a New Trial.

In the Circuit Court of the United States for the District of Kansas.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs, *vs.* BENJAMIN F. SIMPSON, Defendant. } 3301.

And now on this 12th day of Jan'y, A. D. 1882, come the above-named plaintiffs, by A. H. Case, Esq., J. G. Mohler, Esq'r., & J. S.

Merritt, Esq., and move the court, now here, to set aside the verdict of the jury returned herein, and grant them a new trial, for the following causes:

1. For that the verdict in this case is contrary to and not sustained by the evidence.

2nd. For that the verdict herein is contrary to law.

3. Error of law occurring at the trial and excepted to by the plaintiffs.

A. H. CASE, J. G. MOHLER & J. S. MERRITT,
Att'ys for Plaintiffs.

Endorsed: No. 3301. In the circuit court of the United States for the district of Kansas. James C. Jones and Jacob Weil,
32 partners as Jones & Weil, plaintiffs, *vs.* Benjamin F. Simpson, defendant. Motion for a new trial. Filed Jan'y 12th, A. D. 1882. A. S. Thomas, clerk. Case, Mohler & Merritt, att'ys for pl'ffs.

And on this day, to wit, January 13th, 1882, in the November term of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

JAMES C. JONES and JACOB WEIL, Partners as Jones & Weil, Plaintiffs, *vs.* BENJAMIN F. SIMPSON, Defendant. } 3301.

The plaintiffs' motion for a new trial came on to be heard; on consideration whereof the court does overrule said motion; to which ruling and judgment of the court the plaintiffs excepts. Time given plaintiffs to February 6th, 1882, to prepare and file bill of exceptions.

And on this day, to wit, February 7th, 1882, in the November term of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

JAMES C. JONES and JACOB WEIL, Partners as Jones & Weil, Plaintiffs,
33 *vs.* } 3301.
BENJAMIN F. SIMPSON, Defendant.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs, *vs.* GEORGE HOISINGTON, Defendant. } 3302.

And now on this 6th day of February, A. D. 1882, to which day of the November term, A. D. 1881, this cause duly came by adjournment, came the above-named plaintiffs, and in open court present to the court their bill of exceptions taken on the trial of the above

case, and pray the court to allow, sign, and seal the same, which is accordingly done, as prayed for; and on motion of the plaintiffs, said bill of exceptions is ordered to be filed by the clerk, and made a part of the record in this case.

34 UNITED STATES OF AMERICA, } ss:
District of Kansas, }

In the Circuit Court of the United States for the District of Kansas.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant. } 3302.

Be it remembered that on this day, to wit, December 21st, 1880, the said plaintiffs filed in the clerk's office of said court their petition, precipe, and security for costs in said entitled cause, which petition, precipe, and security for costs, with the endorsements thereon, are in the words and figures following, to wit:

Petition.

UNITED STATES OF AMERICA, } ss:
District of Kansas, }

In the Circuit Court of the United States for the District of Kansas.

JAMES C. JONES and JACOB WEIL, Partners as Jones & Weil, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant. } 3302.

35 The said James C. Jones and Jacob Weil, partners as Jones & Weil, who are each citizens of the State of Colorado, complain of the said George Hoisington, who is a citizen of the State of Kansas, and for cause of action saith: That on the 4th day of December, 1880, they, the said plaintiffs as such partners, were the owners of and in possession of the following-described goods and chattels, to wit: 46 valises, 12 pair men's boots, 14 cases men's boots, 36 trunks, 73 boxes of collars, 63 boxes of cuffs, 329 linen collars, one lot of jewelry, 2 doz. sleeve holders, 146 shirts and drawers, 271 pair suspenders, 140 p'r other boots, 5 p'r rubber boots, 7 p'r rubber overs, 6 p'r otherovers, 21 p'r shoes, 32 coats, 111 p'r pants, 3 ulsterettes, 34 vests, 1 boy's suit, 6 overcoats, 72 pair of gloves, 69 ties, 73 p'r socks, 6 knit jackets, 7 comforters, 15 other p'r pants, 4 coats & vests, 3 suits, 48 p'rs gloves, 17 p'r mitts, 78 overalls and waists, 172 shirts, 69 other shirts & drawers, 267 p'r other socks, 2 doz. pulse warmers, 8 other p'r socks, 161 p'r gloves, 1 lot of straw hats, 128 other shirts & drawers, 12 bows, 308 handkerchiefs, 167 other ties, 19 other p'r socks, 38 other boys' suits, 282 caps—men's, boys', and women's, 53 other pair boots, 2 rubber coats, 1 lot of summer goods, 66 p'r of other gloves, 33 other p'r mitts, 136 other shirts and drawers, 108 blue flannel shirts and drawers, 56 other

boys' suits, 410 hats, 225 other shirts, 47 blankets, 80 other shirts and drawers, 50 overcoats, 64 other hats, 1 other
36 coat, 162 other suits, 65 other overcoats, 35 coats & vests, 9 other coats, 10 blouses, 6 pr. overalls, 426 pair of other socks, 17 other ties, 93 scarfs, 1 iron safe, 113 other shirts, 65 overalls, 31 pr. boys' overalls, 830 paper collars, 536 linen collars, 110 pr. linen cuffs, 7 linen dusters, 2 other suits, 1 pr. pants, 1 vest, 1 pr. doeskin pants, 2 other rubber coats, 8 bl'k vests, 19 game bags, 1 gum cap, 13 pr. plow shoes, 9 white vests, 1 pr. linen pants, 11 pr. arctics, 19 pr. gum boots, 127 pr. other boots, 2 pr. pants, 2 pr. other pants, 1 other shirt, 2 pr. other overalls, 21 other trunks, 29 other valises, 7 woolen jackets, 1 lot neckwear, collars, & jewelry, 44 other shirts, 40 other pr. gloves, 1 lot other lot straw hats, 15 other dusters, 5 other linen coats, 1 alpaca coat, 5 other dusters, 9 other coats, 215 other scarfs, 43 pr. other suspenders, 20 pr. other pulse warmers, 214 other ties, 16 boxes other cuffs, 160 boxes other collars, 105 other caps, 3 pr. slippers, 1 other lot of jewelry, 28 pocket-books, 30 knives, 3 sleeve holders, 5 pr. other gloves, 1 pr. husking gloves, 5 other ties, 2 other h'dk'fs, 19 vests, 1 lot of fixtures, 367 other shirts and drawers, 1 lot of bows, 48 other bows, 4 other scarfs, 8 pr. other gloves, 1 lot of h'dk'fs, 34 other h'dk'fs, 28 other pr. mitts, 96 pr. other suspenders, 10 other hats, 1 other overcoat, 171 other caps, 594 other hats, 132 pr. other gloves, 126 other shirts, 5 other suits, 1 other coat & vest, 69 other pants, 15 other boys' vests, 54 other men's vests, 12 other suits, 3 other pr. mitts, 157 pr. other gloves, 32 other suits, 1 other
37 coat & vest, 37 other coats, 76 other overcoats, 2 kilts, 95 other suits, 18 other overcoats, 2 other suits, 1 other pr. pants, 18 other coats, 1 lot of children's overcoats, and of the aggregate value of thirteen thousand nine hundred and eighty $\frac{1}{100}$ dollars.

And the said plaintiffs further aver that the said defendant, on said day, in said district, and in the State of Kansas, wrongfully took and carried away, and converted the same to his own use, to the damage of the plaintiffs twenty thousand dollars, and special damages as follows, to wit: Attorney's fees in this case, $1,000; 6 trips from Las Animas, Colorado, to Kansas, to look after the attached goods and business growing out of the seizure of the goods, & expenses, $600; wages to Paul Goldsmith, $80; wages to E. C. Adams as clerk, $40; he at paid Bonebrake for building to store goods, $10; loss of time in attending to the attachment suits, & by reason of the seizure of the goods by defendant, 40 days, $300. Wherefore the plaintiffs claim judgment against the said defendant for the sum of twenty thousand dollars, the damages sustained by reason of the premises, and costs of suit.

J. G. MOHLER & CASE & FREDRICH,
Att'ys for Pl'ffs.

Precipe.

The clerk will issue a summons for the defendant, George Hoisington, directed and returnable according to law. Indorse sum-

38 mons: "If default be made, plaintiff- will take judgment for $20,000.00, interest and costs.

J. G. MOHLER & CASE & FREDRICH,
Att'ys for Pl'tffs.

Dec. 21, 1880.

Endorsed: No. 3302. Jones & Weil *vs.* Geo. Hoisington. Pet. & Prec. Filed Dec. 21, 1880. A. S. Thomas, clerk. J. G. Mohler, Case & Fredrich, att'ys.

Security for Costs.

In the Circuit Court of the United States for the District of Kansas.

JAMES C. JONES and JACOB WEIL, Partners as Jones & Weil, Pl'ffs,

vs.

GEORGE HOISINGTON, Def't.

I enter myself security for costs in said case, and promise to pay all costs which may accrue to the opposite parties in this action, or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by them, I hereby agree and stipulate that execution may issue against my property for any costs taxed against them, or either of them.

Dated this 21st day of Dec., 1880.

W. E. WEIL.

Endorsed: No. 3302. Jones & Weil *vs.* George Hoisington. Sec. for costs. Filed Dec. 21, 1880. A. S. Thomas, clerk. Approved Dec. 21st, 1880. A. S. Thomas, clerk.

39 And on this day, to wit, December 21st, 1880, the clerk of said court issued a summons in said entitled action, which said summons, with the endorsements and marshal's return thereon, is in the words and figures following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

The United States of America to the marshal of the district of Kansas, Greeting:

You are hereby commanded to notify George Hoisington that he has been sued by James C. Jones & Jacob Weil, partners as Jones & Weil, in the circuit court of the United States for the district of Kansas, and that unless he answer by the twentieth day of January, A. D., 1881, the petition of the said James C. Jones & Jacob Weil, partners as Jones & Weil, against him filed in the clerk's office of the said court, such petition will be taken as true, and judgment rendered accordingly. You will make due return of this writ on the thirty-first day of December, A. D. 1880.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Topeka, in said district, this twenty-first day of December, A. D. 1880.

[SEAL.] A. S. THOMAS, *Clerk.*

40 Suit brought for the recovery of money. Amount claimed, $20,000.00, interest and costs.

J. G. MOHLER & CASE & FREDRICH,
Attorneys for Plaintiffs.

U. S. Marshal's Return.

DISTRICT OF KANSAS, *ss:*

Received the within writ December the 22, 1880, and served the same on the within-named defendant, George Hoisington, at Dickinson county, State and dist. of Kansas, Dec. 28th, 1880, by delivering to him personally a true and correct copy of this writ, with all the endorsements thereon.

B. F. SIMPSON, *U. S. M.*,
Fees, $8. By J. H. SMITH, *Deputy.*

Endorsed: No. 3302. Circuit court of the United States, district of Kansas. Jones and Weil *vs.* George Hoisington. Summons. Issued Dec. 21st, 1880. Returnable Dec. 31, 1880. Filed Dec. 29th, A. D. 1880. A. S. Thomas, clerk. J. G. Mohler & Case & Fredrich, attorneys for plaintiffs.

And on this day, to wit, January 12th, 1881, George Hoisington, the defendant herein, by his solicitors, filed in the clerk's office of said court his answer in said entitled action, which said answer is in the words and figures following, to wit:

Answer.

41 In the Circuit Court of the United States for the district of Kansas.

JAMES C. JONES and JACOB WEIL, Partners as Jones & Weil, Plaintiffs,

vs.

GEORGE HOISINGTON, Defendant.

First Defense.

Comes now the said George Hoisington, defendant, and for answer to the said petition of the plaintiffs says that he denies each and every, all and singular, the averments therein contained.

Second Defense.

The said defendant further says that he is, and for one year last past has been, sheriff of Dickinson county, State of Kansas, and that by virtue of orders of attachment issued out of district courts of Dickinson and Shawnee counties, in said State, in certain

causes wherein the creditors of Gus. and Max S. Goldsmith were plaintiffs and the said Gus. and Max S. Goldsmith were defendants, and to this defendant as such sheriff directed *directed*, he did, on or about the —— day of December, 1880, and the —— days of January, 1881, seize, as such sheriff, some of the goods described in the plaintiffs' petition, and that said goods seized were, at the time of said seizure, the property of said Gus. and Max S. Goldsmith,
42 and were liable to be seized as aforesaid at the suit of the said creditors of said Gus. and Max S. Goldsmith.

MAHAN & BURTON,
Att'ys for Defendant.

Endorsed: No. 3302. Jones & Weil *vs.* George Hoisington. Answer. Filed January 20th, 1881. Filed Jan. 12th, 1881. A. S. Thomas, clerk. Mahan & Burton, att'ys.

And on this day, to wit, February 18th, 1881, the plaintiffs herein, by their solicitors, filed in the clerk's office of said court their reply in said entitled action, which said reply is in the words and figures following, to wit:

Reply.

In the Circuit Court of the United States for the District and State of Kansas.

JAMES C. JONES and JACOB WEIL, Partners, &c., as Jones & Weil, Pl'fs,
vs.
GEORGE HOISINGTON, Def't.

The said plaintiffs, for reply to the answer in this case filed by said defendant, saith that they deny each and every, all and singular, the allegations and averments therein contained, except that the
43 said defendant unlawfully seized and took possession of the goods and chattels in plaintiffs' petition mentioned.

CASE & FREDRICH & J. G. MOHLER,
Att'ys for Plaintiffs.

At Chambers, Topeka, Kansas.

On proper showing to me made, it is ordered that the above reply be filed by the clerk of said court as of this date, and that the same be used and treated in all respects as though filed in time.

C. G. FOSTER, *Judge.*

Feb. 18th, 1881.

Endorsed: No. 3302. Jones & Weil *vs.* Geo. Hoisington. Reply. Filed Feb. 18th, 1881. A. S. Thomas, clerk. J. G. Mohler & Case & Fredrich, att'ys.

And on this day, to wit, June 22nd, 1881, in the June term of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

JONES & WEIL
vs.
BENJAMIN SIMPSON and JOHN H. MAHAN. } 3301.

JONES & WEIL
vs.
GEORGE HOISINGTON. } 3302.

Now come the plaintiffs in the above-entitled actions, by J. G.
44 Mohler & Case & Frederick, their attorneys, and the defendants in the above-entitled actions, by Mahan & Burton and Peck, Ryan & Johnson, their attorneys, and thereupon these actions are consolidated for the purpose of trial; and to try the issues joined come a jury, to wit, J. B. Parrott, Wm. Whitehead, J. C. Bennett, J. C. VanAllen, W. W. Sargent, J. G. Miller, C. W. Green, W. H. Chase, John J. Hoffman, J. C. Embry, J. W. Tombs, and Thomas Newton, twelve good and lawful men of the body of the district of Kansas, who being duly empanneled and sworn to well and truly try the matters submitted to them in these actions and a true verdict give according to the law and evidence, and thereupon the trial of these cases is proceeded with. And not being concluded at the hour of adjournment, the jury are admonished by the court as to their duties herein, and the furthur hearing postponed until to-morrow.

And on this day, to wit, June 23d, 1881, in the June term of said court, in the record of the proceedings thereof in said entitled actions is the following entry, to wit:

Journal Entry.

JONES & WEIL
vs.
BENJAMIN SIMPSON and JOHN H. MAHAN. } 3301.

JONES & WEIL
45 *vs.*
GEORGE HOISINGTON. } 3302.

Now come the parties herein same as on yesterday, and the jurors empanneled herein being called, and all being present, the trial of these causes is proceeded with; and not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein, and the further hearing of these cases postponed until to-morrow.

And on this day, to wit, June 24th, 1881, in the June term of said court, in the record of the proceedings thereof in said entitled actions is the following entry, to wit:

Journal Entry.

JONES & WEIL
vs.
BENJAMIN F. SIMPSON and JOHN H. MAHAN. } 3301.

JONES & WEIL
vs.
GEORGE HOISINGTON. } 3302.

Now come the parties herein same as on yesterday, and the jurors empanneled herein being called, and all being present, the trial of these causes is proceeded with; and the jury having heard the evidence, arguments of counsel, and instructions of the court,
46 retire, under the charge of a sworn bailiff, for deliberation.

And on this day, to wit, June 25th, 1881, in the June term of said court, in the record of the proceedings thereof in said entitled actions is the following entry, to wit:

Journal Entry.

JONES & WEIL
vs.
BENJAMIN F. SIMPSON. } 3301.

JONES & WEIL
vs.
GEORGE HOISINGTON. } 3302.

Now come the parties herein same as on yesterday, and the jury come into court, and under the charge of their sworn bailiff, and report to the court that they are unable to agree upon a verdict herein. It is therefore ordered by the court that they are hereby discharged from the further consideration of these cases. On motion of plaintiffs it is further ordered by the court that they have leave to amend their petition by interlineation, setting up special damages. Answer to stand, and these cases are continued to the next term hereof.

And on this day, to wit, December 12th, 1881, in the November term of said court, in the record of the proceedings thereof in said entitled actions is the following entry, to wit:

47 *Journal Entry.*

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON and JOHN H. MAHAN, Defendants. } 3301.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs.
vs.
GEORGE HOISINGTON, Defendant. } 3302.

Now comes said plaintiffs in the above-entitled actions, by J. G. Mohler, A. H. Case, and J. S. Merritt, and said defendants, Benjamin

F. Simpson and George Hoisington, by Mahan & Burton and Webb, Johnson & Ryan, their attorneys. And it appearing to the court the above actions are of like nature and relative to the same question, and to avoid unnecessary costs and delay, and that it is reasonable to do so, it is ordered by the court that said actions be, and they are hereby consolidated for trial; and to try the issues joined came a jury, to wit, Chester Thomas, Jr., Allen Wilson, H. B. Clarke, F. Charlesworth, S. W. McComb, Wm. Irving, R. R. Roberts, R. W. Smith, L. Pauley, C. W. Hamilton, C. F. Johnson, and W. S. Gile,
twelve good and lawful men of the body of the district of
48 Kansas, who being duly empanneled and sworn to well and truly try the matters submitted to them in this action, and a true verdict give according to the law and evidence, and thereupon the trial of this case is proceeded with. Whereupon R. R. Roberts, one of the jurors, states that his child is sick, and thereupon the parties consent that he be discharged, and that the trial proceed with the eleven remaining jurors; thereupon he is discharged, and the trial proceeds with the remaining eleven jurors by consent of parties. And the trial not being concluded at the time of adjournment the jurors are admonished by the court as to their duties herein, and the further hearing postponed until to-morrow.

And on this day, to wit, December 13, 1881, in the November term of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON and JOHN H. MAHON, Defendants. } 3301.

JAMES C. JONES and JACOB WEIL, Partners as Jones
49 and Weil, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant. } 3302.

Now come the parties herein same as on yesterday, and the jurors empanneled herein being called, and all being present, except R. R. Roberts, excused, the trial of this cause is proceeded with; and not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein, and the further hearing postponed until to-morrow.

And on this day, to wit, December 14th, 1881, in the November term of said court, in the record of the proceedings thereof in said entitled action, is the following entry, to wit:

Journal Entry.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON and JOHN H. MAHAN, Defendants. } 3301.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant. } 3302.

Now come the parties herein same as on yesterday, and
50 the jury being called, and all being present, the trial of this cause is proceeded with; and not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein, and the further hearing postponed until to-morrow.

And on this day, to wit, December 15, 1881, in the November term of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON and JOHN H. MAHAN, Defendants. } 3301.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant. } 3302.

Now come the parties herein same as on yesterday, and the jury herein being called, and all being present, the trial of this cause is proceeded with; and not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein, and the further hearing postponed until to-morrow.

51 And on this day, to wit, December 16th, 1881, in the November term of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON and JOHN H. MAHAN, Defendants. } 3301.

SAME PLAINTIFFS
vs.
GEORGE HOISINGTON, Defendant. } 3302.

And now come the parties herein same as on yesterday, and the jury herein being called, and all being present, the trial of this

cause is proceeded with; and the jury having heard the evidence, arguments of counsel, and instructions of the court, retire, under the charge of a sworn bailiff, for deliberation.

And on this day, to wit, December 19, 1881, in the November term of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs, *vs.* BENJAMIN F. SIMPSON AND JOHN H. MAHAN, Defendants. } 3301.

52 JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs, *vs.* GEORGE HOISINGTON, Defendant. } 3302.

Now come the parties, by their attorneys, and the jury herein having been kept together until it satisfactorily appears that there is no probability of their agreeing, it is ordered by the court that they be, and are hereby, discharged; and it is further ordered and directed by the court that said entitled actions be tried, commencing Tuesday, January 10th, 1882, at 10 o'clock a. m., and are hereby set down for trial for that time.

And on this day, to wit, January 10th, 1882, in the November term of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs, *vs.* BENJAMIN F. SIMPSON and JOHN H. MAHAN, Defendants. } 3301.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs, 53 *vs.* GEORGE HOISINGTON, Defendant. } 3302.

Now come said plaintiffs in the above-entitled actions, by J. G. Mohler, A. H. Case, and J. S. Merritt; and said defendants, Benjamin F. Simpson and George Hoisington, by Mahan and Burton, their attorneys; and it appearing to the court that the above-entitled actions are of like nature and relative to the same question, and to avoid unnecessary costs and delay, and that it is reasonable to do so, it is ordered by the court that said actions be, and they are hereby, consolidated for trial; and to try the issues joined come a jury, to wit, Joe Carris, Hiram Ward, John Winkler, C. J. Halstead, W. P. D. Fleming, G. P. Bates, J. C. Gordon, A. V. Auter, J. A. Mc-

Laughlin, Wm. S. Curry, Albert Knowles, and W. H. Butterfield, twelve good and lawful men of the body of the district of Kansas, who being duly empanneled and sworn to well and truly try the matters submitted to them in this action, and a true verdict give according to the law and evidence; and thereupon the trial of this case is proceeded with; and not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein, and the further hearing postponed until to-morrow.

54 And on this day, to wit, January 11th, 1882, in the November term of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
BENJAMIN F. SIMPSON and JOHN H. MAHAN, Defendants. } 3301.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant. } 3302.

Now come the parties herein same as on yesterday, and the jurors empanneled herein being called, and all being present, the trial of this cause is proceeded with; and not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein, and the further hearing of these cases postponed until to-morrow.

And on this day, to wit, January 12th, 1882, in the November term of said court, in the record of the proceedings in said entitled action is the following entry, to wit:

Journal Entry.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
55 *vs.*
BENJAMIN F. SIMPSON and JOHN H. MAHAN, Defendants. } 3301.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant. } 3302.

Now come the parties herein same as on yesterday, and the jurors empanneled herein being called, and all being present, the trial of this cause is proceeded with; and the jury having heard the evidence, arguments of counsel, and instructions of the court, retire, under the charge of a sworn bailiff, for deliberation.

And on this day, to wit, January 12th, 1882, in the November term of said court, in the record of the proceedings in said entitled action is the following entry, to wit:

Journal Entry.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant. } 3302.

Now come the parties herein by their attorneys, and the jury herein come into open court, under the charge of their sworn
56 bailiff, and render their verdict herein and special findings in the words and figures following, to wit:

"Circuit Court of the United States, District of Kansas.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil,
vs.
GEORGE HOISINGTON. } 3302.

We, the jury in said entitled action, find for the defendant.
W. H. BUTTERFIELD, *Foreman.*"

"*Special Findings Asked by the Defendant.*

In the Circuit Court of the United States for the District of Kansas.

JONES and WEIL, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant.

1st. In making the sale of the goods in controversy, as claimed by the plaintiffs, did the Goldsmiths thereby intend to hinder and delay their creditors?—Yes.

2nd. In making the sale of the goods in controversy, as claimed by the plaintiffs, did the Goldsmiths intend to defraud their creditors?—Yes.

3rd. At the time Jacob Weil, one of the plaintiffs herein, bought the goods in controversy as the plaintiffs claim, did said Jacob Weil know or have good reason to believe that the said Goldsmiths intended, by said sale, to hinder and delay their creditors?—Yes.

4th. At the time Jacob Weil so, as he claims, bought said goods, did he know, or have good reason to believe, that the said Goldsmiths intended by said sale *by said sale* to defraud their creditors?—Yes.

5th. At or before the time said Jacob Weil made said purchase as aforesaid had said Jacob Weil acquired knowledge of facts connected with the transactions of said G. and M. S. Goldsmith sufficient to put a reasonable man upon enquiry as to the intent
57 of said Goldsmiths in making said sale?—Yes.

W. H. BUTTERFIELD, *Foreman.*"

It is now, therefore, by the court here considered, ordered, and adjudged that said defendant, George Hoisington, go hence without day and have and recover of and from said plaintiffs his costs in this action expended, and that execution issue therefor.

Thereupon the plaintiffs gave notice of a motion for a new trial.

And on this day, to wit, January 12th, 1882, the plaintiffs herein, by their attorneys, filed in the clerk's office of said court their motion for a new trial, which motion is in words and figures following, to wit:

Motion for New Trial.

In the Circuit Court of the United States for the District of Kansas.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant. } 3302.

And now on this 12th day of Jan'y, A. D. 1882, come the above-named plaintiffs, by A. H. Case, Esq., J. G. Mohler, Esq., & J. S. Merritt, Esq., and moves the court, now here, to set aside the verdict of the jury returned herein, and grant them a new trial, for the following causes, to wit:

1. For that the verdict in the case is contrary to and not sustained by the evidence.

2nd. For that the verdict herein is contrary to law.

3rd. Error of law occurring at the trial and excepted to by the plaintiffs.

A. H. CASE, J. G. MOHLER & J. S. MERRITT,
Att'ys for Plaintiffs.

Endorsed: No. 3302. In the circuit court of the United States for the district of Kansas. James C. Jones and Jacob Weil, partners as Jones & Weil, plaintiffs, *vs.* George Hoisington, defendant. Motion for a new trial. Filed Jan'y 12th, A. D. 1882. A. S. Thomas, clerk. Case, Mohler & Merritt, att'ys for pl'ffs.

57½ And on this day, to wit, January 13th, 1882, in the November term of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs,
vs.
GEORGE HOISINGTON, Defendant. } 3302.

The plaintiffs' motion for a new trial came on to be heard; on consideration whereof the court does overrule said motion; to which ruling and judgment of the court the plaintiffs excepts. Time given plaintiffs to February 6th, 1882, to prepare and file bill of exceptions.

And on this day, to wit, February 7th, 1882, in the November term of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

58 JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs, *vs.* BENJAMIN F. SIMPSON, Defendant. } 3301.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs, *vs.* GEORGE HOISINGTON, Defendant. } 3302.

And now on this 6th day of February, A. D. 1882, to which day of the November term, A. D. 1881, this cause duly came by adjournment, come the above-named plaintiffs, and in open court present to the court their bill of exceptions taken on the trial of the above case, and pray the court to allow, sign, and seal the same, which is accordingly done, as prayed for; and on motion of the plaintiffs, said bill of exceptions is ordered to be filed by the clerk, and made a part of the record in this case.

59 *Bill of Exceptions.*

In the Circuit Court of the United States for the District of Kansas.

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs, *versus* BENJAMIN F. SIMPSON, Defendant, } Case No. 3301.

and

JAMES C. JONES and JACOB WEIL, Partners as Jones and Weil, Plaintiffs, *versus* GEORGE HOISINGTON, Defendant. } Case No. 3302.

Be it remembered, that at the November term, A. D. 1881, the above causes being reached for trial in the circuit court of the United States within and for the district of Kansas, the said causes being of the same nature and the same evidence applicable to each of the said causes, the said causes were consolidated by order of the said court, and by said court ordered to be tried at one and the same time.

60 Whereupon a jury for the trial of said causes was duly empanelled and sworn, and the cause opened for the said plaintiffs by the reading of the petitions in said cases, together with a statement of the plaintiffs' case; and the cause was opened for the defendants by the reading of their several answers and the statement of their case.

Whereupon the said plaintiffs, James C. Jones and Jacob Weil,

partners as Jones and Weil, to maintain the issues upon their part, offered testimony tending to prove to the court and jury that they, the said Jones and Weil, were, during the year A. D. 1880, and now are, engaged in a general merchandise business in the State of Colorado at the following points, to wit, West Las Animas, Bent county, and La Junta county; that Jacob Weil, of the said firm of Jones & Weil, some time in the spring of A. D. 1880 made the acquaintance of one Max S. Goldsmith, at Salina, Kansas, where the said Jacob Weil has a brother, W. E. Weil, residing. Said Max S. Goldsmith was a member of the firm of G. and M. S. Goldsmith, which firm was then engaged in the clothing and furnishing business at Abilene, in Dickinson county, Kansas, with a branch store at Junction City, Davis county, Kansas; that the said pl'ffs, in the months of June & July, 1880, bought several bills of goods of said Goldsmiths, at their store in Junction City, Kas., which goods
61 were shipped to pl'ffs at West Las Animas, Col.; that about the 21st day of November, A. D. 1880, the said Jones and Weil received at West Las Animas, Colorado, by the course of mail, a letter from the said G. and M. S. Goldsmith, dated Junction City, Kansas, November 19th, A. D. 1880, requesting a member of the plaintiffs' firm to call upon them at Junction City, as they wished to sell out their entire stock of goods, stating they would make it an object for plaintiffs to come, examine, and purchase the same; that in obedience to said summons, Jacob Weil, of the plaintiffs' firm, went from West Las Animas, Colorado, to Junction City, Kansas, reaching there on the morning of December 4th, A. D. 1880, where, after making enquiry and examination as to condition of goods, as to the financial standing of the Goldsmiths, and learning the price asked for the goods, concluded to, and did, purchase all of the goods owned by the said Goldsmiths, and then in their stores at Junction City and Abilene, at the price demanded, *i. e.*, sixty (60) per cent. of original costs of goods and freight added; that the goods at Junction City were invoiced on said December 4th, and amounted in the aggregate value (original cost & freight) of $\$8{,}402\frac{17}{100}$; that plaintiffs, by said Jacob Weil, on said December 4th, took possess-
62 sion of said goods at Junction City; that said Jacob Weil locking the store and having possession of the key; after which the said Jacob Weil, in company with M. S. Goldsmith, a member of the firm of G. and M. S. Goldsmith, went to Abilene, a distance of about twenty-five (25) miles, *via* U. P. R. R., Kansas Division, arriving at the latter place on the morning of Sunday, December 5th, 1880; that during December 5th the goods in the Abilene store of G. and M. S. Goldsmith were invoiced, and amounted to the aggregate value (original cost and freight) of $\$5{,}374\frac{2}{100}$; that after the said invoice was completed, between the hours of 12 o'clock midnight of Dec. 5 and 4 o'clock a. m. of Dec. 6, two (2) bills of sale, one for each store, were made out and delivered to Jacob Weil for plaintiffs at the law office of Smith & Davidson, whereupon Jacob Weil, for plaintiffs, paid the stipulated price, sixty (60) per cent. of the aggregate invoices, *i. e.*, $\$8{,}265\frac{51}{100}$, as follows: by one draft for $\$4{,}816\frac{35}{100}$ of the pl't'ff, on the Bent Co. Bank

of West Las Animas, Col.; three promissory notes of pl't'ffs, two for $1,250 each and one for $500, due, respectively, in 30, 60, & 90 days from Dec. 6th, & a draft of W. E. Weil on F. A. Hart, Beloit, Kas., for $240, and balance in currency, and took possession of the balance of the goods, the said Jacob Weil leaving the Abilene goods pur-
63 chased in charge of his brother, W. E. Weil, for plaintiffs' firm; that some time during Monday, December 6th, 1880, a sign, "Jones and Weil sell cheap for cash," was prepared and displayed in the show window in the front of the Abilene store, and soon thereafter was displayed across the sidewalk in full view of all passers-by, the sale was fully consum-ated about four o'clock of the morning of December 6th, 1880; that about 10 o'clock a. m. of said December 6th, 1880, the said Goldsmiths' informed the said Jacob Weil that a lot of overcoats, a part of their late stock, were at the store of Simon Rothschild, at Abilene, which had been placed there by them for sale on commission, and insisting that said goods were included in the purchase, but had not been invoiced, whereupon said overcoats were invoiced, and amounted to the aggregate value (original cost and freight) of $204.00, for which the said G. and M. S. Goldsmith then and there made out and delivered to the said Jacob Weil, for Jones and Weil, a receipted bill for said overcoats, and the said Jacob Weil then and there paying the stipulated price for said overcoats, $120.40, by delivering the draft of W. E. Weil on F. A. Hart, taking possession of said overcoats and placing them in the stock in his store. That thereafter the Goldsmiths, nor
64 either of them, neither directly nor indirectly, ever had any possession or control of any of said goods, but the said goods were from thence forward until they were seized and taken by the said defendants in the sole and exclusive possession and continued possession of the plaintiffs. That from said December 6th to the time of the seizure of said goods the said plaintiffs carried on and conducted said business in their own name at said Abilene store.

The said plaintiffs having packed the goods at the Junction City store, and shipped the major portion of said goods to Abilene, Kansas, and placed them in their store at Abilene, the remainder having been shipped to said plaintiff at Topeka for reshipment to said plaintiffs at West Las Animas, Colorado. That from said Dec. 6th, 1880, to the time of the seizure of said goods by the said defendants the said plaintiffs had sold in their business at Abilene about $80 worth of said goods. That at 7 p. m. Saturday, December 11th, 1880, the defendant, George Hoisington, as sheriff of Dickinson county, Kansas, under and by virtue of certain writs of attachments sued out of the district court of Dickinson county, Kansas, by various creditors of the Goldsmiths, seized upon and took into his possession about $5,100.00 worth of the said goods of these plaintiffs. That at the time and before said seizure said Hoising-
65 ton was informed by the clerk of the plaintiffs that the goods were the goods of the plaintiffs, and that the Goldsmiths had no interest in them whatever. That the remainder of all of said goods not seized by said Hoisington, nor sold by said plaintiffs in due course of trade, were at Abilene, and Topeka, Kansas,

seized and taken by defendant, Benjamin F. Simpson, as United States marshal for the district of Kansas, through his deputies, under and by virtue of certain writs of attachment sued out of the circuit court of the United States for the district of Kansas, at the suit of certain creditors of the Goldsmiths, and against the said Goldsmiths. That the marshal knew before the seizure that the goods had been sold by the Goldsmiths to Jones and Weil, and were claimed by these plaintiffs. That none of the said goods so seized by the said Hoisington and said Simpson have ever been returned to plaintiffs, nor the value thereof paid to them, but the same were converted to the use of the said Hoisington and said Simpson. That at the time of sale, on said December 6th, 1880, and prior thereto, that said firm of G. and M. S. Goldsmith stood high, financially, with good credit, integrity unquestioned, which facts were learned by the said Jacob Weil, upon his inquiry aforesaid, and which was all the information he obtained upon his own inquiry. Plaintiffs also proved
66 that the goods seized by the defendant Simpson was of the value of $8,718.59, and that the goods seized by the deft Hoisington were of the value of $5,100.00, or in all of the aggregate value of $13,818.59, at time of seizure. Whereupon plaintiffs rested.

Whereupon the defendants, to maintain the issues upon their part, produced testimony tending to prove and to prove said sale to be fraudulent. That the Goldsmiths were then, on the said December 6th, 1880, indebted to their various creditors, in the aggregate sum of about $24,000; that the Goldsmiths claimed to owe Dora Goldsmith, wife of Max S., about $2,000, borrowed money, and Sol. Goldsmith, father of Max S., about $2,500, borrowed money, no portion of which was then, however, due; that the goods for which said indebtedness arose were largely purchased within four (4) months prior to said December 6th, 1880, of various parties doing business at Milwaukee, Wisconsin, Cincinnati, Ohio, Chicago, Illinois, Philadelphia, Boston, New York city, Gloversville, N. Y., St. Louis, and other places; that the bulk of said purchases were made at Abilene, Kansas, from traveling salesmen representing said creditors.

Whereupon, further to maintain the issues upon their part, the said defendants produced one Ann Clark as a witness, who, being sworn, testified, among other things, that Gus. Goldsmith,
67 with his wife Hallie & child, were boarding at her house; that she first learned that the Goldsmiths had sold out from Gus. Goldsmith on the morning of Dec. 6th; whereupon the following question was propounded to her:

Q. What did Gus. Goldsmith say to you at that time?

To the answering of which question the said plaintiffs then and there objected, upon the ground that the same was irrelevant, incompetent, and immaterial, and called for the declarations of the vendor after the full consum-ation of the sale, and for the further reason that neither of said plaintiffs were present at said conversation.

Whereupon the court inquired whether the plaintiffs, or either of them, were present at said conversation; which was answered in the negative.

The court overruled the objection and admitted the testimony as competent as a part of the *res gesta;* to which ruling of the court in admitting said testimony the plaintiffs then and there duly excepted, and still except; and which exception is by the court allowed.

Whereupon the said witness made the following answer:

Answer. Gus. said they had sold the store and they were going away that evening on the train; for me not to mention it to any one, and not to let my son tell it, or let the servant girl go out that evening, as he did not want it known.

68 Whereupon the following question was asked witness:

Question. Well, what did Gus. Goldsmith do that evening?

To the answering of which question the said plaintiffs then and there objected, for the same reason stated in their objection to the previous question; and which objection was by the court overruled. To which overruling of the court the said plaintiffs then and there duly excepted, and still except; and which exception is allowed.

Whereupon the witness made the following answer:

Answer. Gus. and Max Goldsmith took supper at my house in the evening of December 6th, 1880, with one Kelley and Simon Rothschild and his wife; they left my house between 6 and 7 o'clock that evening with Simon Rothschild, carrying two valises with them; they went away in a carriage.

Whereupon the following question was asked the witness:

Question. You may state what (if anything) Hattie and Dora Goldsmith, the wives of Gus. and M. S. Goldsmith, did that Monday evening, Dec. 6th, 1880?

To the answering of which question the said plaintiffs then and there objected, upon the same grounds and for like reasons as stated in the objection to the first question asked this witness; to which objection reference is hereby had.

69 Whereupon the court inquired of the counsel for defendants why this testimony, in their judgment, was competent. Being answered by said counsel that they intended to show the plaintiff would be connected therewith, the court permitted the said question to be answered. To which ruling of the court in permitting said question to be answered the plaintiffs then and there duly excepted, and still except; which said exception is allowed.

Whereupon the said witness testified to the jury, in answer to said question, as follows:

Answer. I started, with Dora and Hattie Goldsmith and Mrs. Simon Rothschild, to go to the depot at Abilene, about 10 o'clock on Monday night, December 6th, 1880. We did not go to the depot; we went as far as the court-house; had about six satchels and valises. I had put up a lunch for Dora and Hattie Goldsmith; they said they were going to Cincinnati. We were stopped at the court-house corner by some gentlemen, who said there was a great excitement at the depot; that they had better go back and stay all night. Hattie

Goldsmith said we must go and meet the boys; the gentleman replied, he would get on the train and tell the boys how it is. I asked Hattie Goldsmith, Who is it that stops you on the way? She said it was Mr. Weil. They talked German part of the time. We
70 went back; they stayed at my house with Mrs. Rothschilds all night. I could not recognize this gentleman myself; it was dark. He may have heard what Hattie Goldsmith said to me; think he was standing near enough to hear. When he stopped us he said he had been there watching for us for an hour. Gus and Max Goldsmith were not there.

Defendants next introduced as a witness one Simon Rothschild, who, being duly sworn, was asked the following question:

Question. State what you may know of the Goldsmiths leaving Abilene on the night of December 6th, 1880; where they went, and how they went.

To which question the said plaintiffs then and there duly excepted, upon the grounds of its being incompetent, irrelevant, and immaterial, and the other grounds stated in the objection to the first question asked of the witness Ann Clark; which objection was by the court overruled, upon the ground that the time was so nearly contemporaneous with the sale as to become a part of the *res gestæ*, and that it would be competent as bearing upon the *bona fides* of the Goldsmiths in making the sale; to which ruling of the court the said plaintiffs then and there duly excepted, and still except; which exception is allowed.

Whereupon said witness made answer as follows:

Answer. On Monday evening, December 6th, 1880, I
71 hired a carriage and driver upon the request of Gus. Goldsmith to drive Gus. and Max S. Goldsmith and myself to Chapman's Creek, a station on the U. P. R. R., Kansas Division, about 12 miles east of Abilene. We drove down to Chapman's Creek, and when the night train going east about 10.30 came along we got on the cars at Chapman's Creek, Gus. and Max S. Goldsmith going into the smoker, I taking the valises and going into the ladies' car to look for the Goldsmith women, whom the boys thought might be on the train. I met Jacob Weil in the ladies' car, on his way to Junction City. I asked him where the Goldsmith women were, he said he had not seen them. I told him the boys were in the smoker, and he and I went in and found them there. There was some conversation there with the Goldsmiths. We, the Goldsmiths, Jacob Weil, and myself, took seats together, facing each other. I think that Jacob Weil said something about a big crowd and excitement at the depot at Abilene. I said to the Goldsmiths, it was a good thing you did not take the cars at Abilene, or you might have been arrested like Porter & Smith. Jacob Weil expressed no surprise, and made no inquiry about what I meant by the Goldsmiths being arrested like Porter & Smith. After we
72 had talked there some time Jacob Weil and the Goldsmiths got up and went towards the end of the car, and had some con-

versation that I could not hear, and then came back to their seats. After they returned to their seats Gus. Goldsmith handed me $25 to give to his wife Hattie when I should go back to Abilene. We all rode together, talking, until we arrived at Junction City, where Jacob Weil and I got off; that was about 12 o'clock midnight. Weil and I got off at Junction City. I did not see Weill again until some time after the goods were attached. I returned to Abilene on the train 5 o'clock *morning* next morning. The Goldsmiths were also brought back at the same time, under arrest. I was with the Goldsmiths nearly all the afternoon of December 6th, 1880, and they were not in company with Jacob Weil during that time.

Said defendants also produced one R. S. Smith as a witness, who, after being duly sworn, and having testified that he was a member of the firm of Smith and Davenport, attorneys-at-law, Abilene, Kansas, and that his partner Davidson had drawn up the bill of sale from the Goldsmiths to Jones and Weil, was asked the following question:

Question. What compensation did your firm receive from the Goldsmiths for your services in the matter of this sale?

73 To which the plaintiffs objected as being incompetent, irrelevant, and immaterial; and which objection was overruled by the court; to which ruling of the court the plaintiffs then and there duly excepted, and still excepts; and which exception is allowed.

The witness then answered as follows:

Answer. Some time after the bills of sale were executed on Monday, and the money paid by Jacob Weil, one of the Goldsmiths brought us a lot of accounts, amounting to about $350, to pay us for our advice and drawing the bills of sale, and, as I understood it, to defend them in any criminal action, if one were brought against them.

Defendant also produced the defendant, George Hoisington, as a witness in their behalf, who, being duly sworn, was asked the following question:

Question. State when and where, and under what circumstances, you saw Gus. and Max S. Goldsmith on the night of December 6th, 1880.

To which the plaintiffs objected, as being incompetent, irrelevant, and immaterial; which objection was by the court overruled; and to which ruling of the court the plaintiff then and there duly excepted, and still except; and which exception is allowed.

Whereupon the witness answered as follows:

Answer. I went from Albilene east on the night train Monday night, December 6th, 1880. I was lying down in the smoker,
74 with my hat over my face, at Chapman's Creek. Gus. and Max S. Goldsmith got onto the cars, coming into the smoker. Afterwards Simon Rothschild and some gentleman came into the

smoker where the Goldsmiths were; don't know who the gentleman was; they seemed hilarious; they talked German; could not tell what thay said, but some one of them said something about the sheriff. I arrested Gus. and M. S. Goldsmith some time after the train left Junction, between Junction and Manhattan, and took them back to Abilene on the next train. Simon Rothschild and the man whom I did not know got off at Junction City.

The defendants also produced and offered in evidence the depositions of one Max S. Goldsmith, taken on behalf of plaintiffs, but not introduced in evidence by them, and who, after having testified that he was the Max S. Goldsmith who was a member of the firm of G. & M. S. Goldsmith, who sold their goods to plaintiffs, Jones and Weil, received in payment notes, drafts, and currency, that said sale was made in good faith, and not to hinder, delay, or defraud their creditor, was asked in said deposition, on cross-examination, the following questions, and to which made the following answers; and to which questions and answers the plaintiffs then and there objected, as being irrelevant, incompetent, and immaterial to any issue in
75 this case; which objection was by the court overruled, and said questions and answers permitted to go to the jury as evidence in this case; to which said rulings the said plaintiffs then, and there duly excepted, still except; and said exception is allowed to wit:

Question. You say you negotiated these three notes?
Answer. Yes, sir.
Question. Who did you negotiate them to?
Ans. To parties that we owed money to.
Ques. Name the parties.
Ans. Well, Sol. Goldsmith and my wife.
Ques. Anybody else?
Ans. No. not as I remember; I gave them to my wife, all of them, and told her I suppose these will cover yours and father's claims.
Ques. When did you give them to her?
Ans. On the 6th day of December.
Ques. What time in the day?
Ans. About eleven o'clock; I could not mention exactly, 'cause we were very busy that day.

The said defendant also offered in evidence the questions and answers following of the last above-named witness, the same being a part of the cross-examination of said witness at the time of the taking of said depositon; to which questions and answers the said plaintiffs then and there objected, as being incompetent, irrelevant, and immaterial; which objections were by the court overruled, and said questions and answers were permitted to go the jury as evi-
76 dence; to which ruling of the court the said plaintiffs then then and there duly excepted, and still except; and said exception is allowed:

Question. Did you state that you negotiated these drsfts, too, as well as the notes?

Ans. Yes; we gave them the drafts and notes; I endorsed them to my wife, and told them to send them to the old gentleman and he should take his money out, and give us the balance.

Quest. Then you negotiated them all to your wife at the same time—drafts and notes?

Ans. Yes, sir; for the payment of hers and father's claims.

The said defendants also offered in evidence the questions and answers following of the last above-named witness, the same being a part of the cross-examination of said witness at the time of the taking of said deposition; to which questions and answers the said plaintiffs then and there objected, as being incompetent, irrelevant, and immaterial; which said objections were by the court overruled, and said questions and answers permitted to go to the jury as evidence; to all of which ruling of the court the said defendants then and there duly excepted, still except; and said exception is allowed:

Question. Were you father and your wife paid out of the proceeds of those drafts?

Ans. They were at the time.

77 Quest. What do you mean by saying "they were at the time?"

Ans. That money has been given up again.

Quest. Given up by whom?

Ans. Well, by my wife and my father.

Quest. To whom?

Ans. To me.

Ques. For what purpose?

Ans. For the purpose of releasing us from under civil arrest.

Quest. How much did they give up?

Ans. I believe it was $2,600.

thQuestion. Was that all they had taken out of *of* the proceeds of e notes and drafts?

Ans. Well, I suppose it cost something while we were there didn't it?

Ques. Answer my question, please.

Ans. It is all they had left.

Question. All they had left of what?

Ans. On advancing their money, besides what we expended of our own.

Question. Advanced how; for what purpose, and when?

Ans. At the time we were located at the Junction City jail.

Ques. For what purpose?

Ans. Paying Mr. Kiehl and our hotel bills and sundry expenses, such as wines, liquors, segars, &c.

Question. Do you pretend to say now that $2,600 was all there was left out of the proceeds of those notes and drafts, over and above paying your expenses?

78 Answer. All, to my knowledge. I never kept account of what money was on hand or what money they expended; I did not care.

Question. Did you have a statement at Junction City showing the various items of expenses and the amounts showing where all the money had gone to, except the $2,600?

Answer. I believe I did.

Question. Do you know that statement to be correct?

Answer. Well, no—not exactly; I supposed it to be; I was not sure.

The defendants also offered in evidence the questions and answers following of the last above-named witness, the same being a part of the cross-examination of said witness at the time of taking said deposition; to which questions and answers the said plaintiffs then and there objected, as being incompetent, irrelevant, and immaterial to any issue in this case; which objection was by the court overruled, and said questions and answers were permitted to go to the jury as evidence; to all of which rulings of the court the said plaintiffs then and there duly excepted, still except; and said exception is allowed:

Question. Didn't you make preparations to leave Kansas and come to Cincinnati at once?

Ans. No, sir; not to stay.

Question. Didn't you start to Cincinnati by the K. & P. on the night of the 6th of December?

Answer. Yes, sir.

79 The defendant also offered in evidence the questions and answers following of the last above-named witness, the same being a part of the cross-examination of said witness at the time of the taking of said deposition; to which questions and answers the said plaintiff- then and there objected, as being incompetent, irrelevant, and immaterial to any issues in this case; which objection was by the court overruled, and said questions and answers permitted to go to the jury as evidence; to all of which ruling of the court the plaintiff- then and there duly excepted, still except; and the said exception is allowed:

By MR. MAHAN:

Question. What did you do with the outstanding accounts and notes pertaining to the Abilene house, Mr. Goldsmith?

Answer. I suppose some of them are outstanding yet, but some of them were given to Smith and Davidson, as a payment or part payment for their services.

Question. When were these accounts, you speak of, turned over to Smith and Davidson?

Ans. I believe on a Tuesday.

Question. On a Tuesday?

Ans. Yes, sir; I am not sure; my partner attended to that.

Question. Compensate them for what?

Answer. Well, for their services.

Question. For their services in doing what?

80 Answer. Well, in assisting us in the sale, doing work connected with the sale.

Question. Were they not paid their fees that Sunday night, or Monday morning, when they did the work?

Answer. At that very time?

Question. Yes, sir.

Answer. Well, they didn't receive any money from us that night.

Question. Did you assign them the accounts that night?

Ans. Not that night.

Question. Was it the next day?

Ans. Monday afternoon or Tuesday morning.

Ques. Monday night you started away?

Ans. Well, yes, it was Monday afternoon.

Question. What had Smith and Davidson done, at that time; what services had they performed for you?

Question. What services had they performed, up to Monday afternoon, for you and your partner?

Answer. Well they wrote out the bill of sale and attended to all the legal business which was necessary in a case of that kind.

Question. You mean the sale of goods?

Ans. Yes, sir.

Question. What did they do besides drawing the bill of sale?

Answer. Well, they advised us; they were our legal advisers.

Question. With respect to what?

Ans. With respect to that bill of sale.

81 Question. In what respect did they advise you concerning the bill of sale?

Answer. Well, they wrote out the bill of sale, attached the invoices, and that is about all.

Question. What amount of notes and accounts did you assign to them for that service?

Answer. I really do not know what the accounts aggregated. Notes, we didn't have any outstanding.

Question. It was all accounts?

Ans. I believe so; I cannot state; there might have been one or two notes.

The defendants also offered in evidence the questions and answers following of the last above-named witness, the same being a part of the cross-examination of said witness at the time of the taking of the said depositions; to which questions and answers the said plaintiffs then and there objected, as being incompetent, irrelevant, and immaterial to any issue in this cause; which objection was by the court overruled, and said questions and answers were permitted to go to the jury as evidence; to all of which rulings of the court the plaintiffs then and there duly excepted, still except; and the said exception is allowed:

Question. How long did Jacob Weil stay at Abilene that time?

Answer. I believe he went away Monday.

Question. What time on Monday?

Answer. I don't know; I was not around the store very

82 much; I believe he went away Monday night, and went down to Junction City.

Question. Didn't you go on the same train that he did?
Answer. Yes, sir.
Question. Didn't you see him?
Answer. I did.
Question. Where did you get on the train?
Answer. At Chapman.
Question. How did you go there?
Answer. I went there in a carriage.
Question. Couldn't you have taken train at Abilene?
Answer. Yes, sir.
Question. Who went with you?
[Answer.] Simon Rothschilds, my partner, and the butcher, I forget his name, in Abilene.
Question. Mr. Cooper?
Answer. Yes.
Question. Why did you go to Chapman by carriage?
Answer. We were advised to leave Abilene at once, not even to wait for the train.
Question. What time did you start to Chapman?
Answer. Seven o'clock.
Question. In the evening?
Answer. Yes, sir.
Question. Did you meet Mr. Weil on the train?
Answer. Yes, sir.

The defendants also, on cross-examination, offered in evidence the questions and answers following of the last above-named witness, the same being a part of the cross-examination of said witness at the time of the taking of said deposition; to which questions
83 and answers the plaintiffs then and there objected, as being incompetent, irrelevant, and immaterial to any issue in this case; hich objection was by the court overruled, and said questions and answers were permitted to go to the jury as evidence; to all of which ruling of the court the plaintiffs then and there duly excepted, still except; and said exception is allowed:

Question. At the time you were in the Junction City jail didn't you tell Bennett Keith, the sheriff of Davis county, Kansas, that Mr. Jones was to hold back on the payment of this $500 note on account of the goods having been attached, any that he was not to pay any expense with this; that you were to pay all the expenses; and that the note was placed in Paul Goldsmith's hands, and was not to be paid until Mr. Weil could see whether he was going to be put to any trouble or not?
Answer. No, sir; I never spoke to Mr. Weil about anything of that kind.
Question. At the depot, at Topeka, at the time you were there making application to the supreme court for a writ of *habeas corpus*, did you not say, in the presence of Mr. Weil and W. S. Staubau, or either of them, that this note was placed in Paul Goldsmith's hands, and was not to be paid until Mr. Weil saw whether he was going

to be put to any expense on account of litigation about these goods?

84 Answer. No, sir.

The defendants also offered in evidence the questions and answers following of the last above-named witness, the same being a part of the cross-examination of said witness at the time of the taking of said deposition; to which questions and answers the said plaintiffs objected, as being incompetent, irrelevant, and immaterial to any issue in this case; which objection was by the court overruled, and said questions and answers were permitted to go to the jury as evidence; to all of which ruling of the court the plaintiffs then and there duly excepted, and still except; and said exception allowed:

Question. On Monday evening when you started to Cincinnati you say you found Mr. Weil on the train when you got on at Chapman station?

Answer. Yes, sir.

Question. He got off at Junction City?

Answer. He did.

Question. How far did you go?

Answer. Just a little bit further.

Question. How much further?

Answer. About as far as Manhattan.

Question. Why did you stop?

Answer. I was told to stop.

Question. Who by?

Answer. Sheriff Hoisington and his partner.

Question. Who do you mean by his partner?

Answer. Mr. Pierce.

85 Question. The lawyer?

Answer. Yes, sir.

Question. Of the firm of Hoffmire and Pierce?

Answer. Yes, sir.

Question. Did the sheriff take you back?

Answer. He did.

Question. Where to?

Answer. Abilene.

Question. Where was Weil when you were taken back?

Answer. I suppose in Junction City.

The defendants also, on cross-examination, offered in evidence the questions and answers following of the last above named witness, the same being a part of the cross-examination of said witness at the time of the taking of said deposition; to which questions and answers the plaintiff objected, as being incompetent, irrelevant, and immaterial to any issue in this case; which objection was by the court overruled, and said questions and answers were permitted to go to the jury as evidence; to all of which ruling of the court the said plaintiffs then and there duly excepted, still except; and said exception is allowed:

Question. At the time you left Abilene to go to Chapman to take

the cars at Chapman, was it not the understanding that your wives were to take the train that night?

Answer. No, sir; not that I knew of.

Question. Well, you ought to know.

86 Answer. I made no understanding of that kind with my wife.

Question. What arrangement did you make?

Answer. They were to stay there until we came back.

Question. You say they were to go to the train that night?

Answer. Not that I know of.

Question. Didn't they start to go to the train that night?

Answer. I don't know whether they did or not.

Question. You don't know?

Answer. No.

Question. You say it was the understanding they should stay until you came back?

Answer. Yes, sir; that was my understanding.

The defendants also, on cross-examination, offered in evidence the questions and answers following of the last above-named witness, the same being a part of the cross-examination of said witness at the time of the taking of said deposition; to which questions and answers the plaintiff objected, as being incompetent, irrelevant, and immaterial to any issue in this case; which objection was by the court overruled, and said questions and answers were permitted to go to the jury as evidence; to all of which rulings of the court the plaintiff then and there duly excepted, still except; and said exception is allowed:

Question. In assigning the accounts to Smith and Davidson, wasn't it understood that they were to defend you against any prosecution that might be begun against you?

Answer. When they received the accounts I believe that

87 was included as a part of their services.

The defendants also produced and offered in evidence the deposition of one Gus. Goldsmith, taken on behalf of the pl'ffs but not introduced in evidence by them, and who, after having testified that he was the Gus. Goldsmith who was a member of the firm of G. & M. S. Goldsmith who sold their goods to plaintiffs, Jones and Weil, and received in payment notes, drafts, and currency, & that said sale was *bona fide*, and not made to hinder, delay, or defraud their creditors, was asked in said deposition on cross-examination the following questions, and to which made the following answers; to which questions and answers the plaintiffs then and there objected, as being incompetent, irrelevant, and immaterial to any issue in this case; which objection was by the court overruled, and said questions and answers were permitted to go to the jury as evidence in this case; to which said rulings the said plaintiffs then and there duly excepted, and still except; and said exception is allowed.:

Question. What did you do with the notes and drafts which you got from Mr. Weil on Monday?

Answer. I sent them to Cincinnati.

Question. How?

Answer. By mail, at 10.30 in the morning.

Question. Who sent them?

Answer. I.

88 Question. How were the- endorsed?

Answer. To Dora Goldsmith.

Question. Why were they endorsed to Dora Goldsmith?

Answer. Because we wanted her to take out what we owed her first.

The said defendants alsoo ffered in evidence the questions and answers following of the last above-named witness, the same being a part of the cross-examinstion of said witness at the time of the taking of said deposition, and after he had testified in chief in said deposition that his firm had borrowed from Dora Goldsmith, at time of commencing business, about $1,800; to which questions and answers the said plaintiffs then and there objected, as being incompetent, irrelevant, and immaterial to any issue in this case; which objection was by the court overruled, and the said questions and answers were permitted to go to the jury as evidence in this case; to which rulings of the court the said plaintiffs then and there duly excepted, still excepts; and said exception is allowed.

Question. Do you know Mr. Schreiber, agent for Friend Bros.?

Answer. Yes, sir; very well.

Question. Do you remember the first bill of goods you bought of him?

Answer. Yes, sir; indeed——

Question. Do you remember the time you contracted for the overcoats, in the fall of 1880?

Answer. Yes.

Question. Was that the same time you bought the first bill?

Answer. Yes; that was in February, 1880.

Question. Did you state to him at that time that you

89 had $7,000 in cash capital in the business, and that you did not owe for any borrowed capital at all?

Answer. I never did, nor was I asked for any statement by him.

Question. You made no statement of that kind?

Answer. No, sir; to the contrary he said he would sell us all the goods we wanted, no matter what the amount would be.

Question. When did you learn that your expenses exceeded your profits?

Answer. As soon as there was no business; in the fall.

The said defendants also offered in evidence the questions and answers following of the last above-named witness, the same being a part of the cross-examination of said witness at the time of the taking of said deposition, and after the witness had testified in chief in said deposition that the- were merely leaving Abilene to settle

with their creditors, intending to return soon; to which questions and answers the said plaintiffs then and there objected, as being incompetent, irrelevant, and immaterial to any issue in this case; which objection was by the court overruled, and said questions and answers were permitted to go to the jury as evidence; to which ruling of the court the plaintiffs then and there duly excepted, still except; and said exception is allowed:

Question. How much have you paid your creditors altogether out of that money?

90 Answer. As much as you saw we had left when we left Junction City.

Question. Just answer my question.

Answer. Well, I think it was about $2,600; there was $2,670 left and you kindly allowed us $70 to get home with.

Question. That is all there was left of it?

Answer. Yes, sir.

Question. What became of the other $6,000?

Answer. Well, a great part of it was squandered by rascally attorneys in Abilene.

Question. Whose attorneys were they?

Answer. Well, our attorneys, of course; some of it was extorted.

Question. Did any trunks or other baggage come on the train that morning?

Answer. Which morning?

Question. The morning of the 6th of December?

Answer. No, sir.

Question. Did any trunks come on the evening train that night?

Answer. Not to my knowledge; I took a valise along.

Question. Didn't your family's clothing come on that train?

Answer. Monday evening? No, sir; they stayed at Abilene.

Question. Did their wardrobe and clothing remain there?

Answer. It did.

Question. It was not started off at all?

Answer. Not to my knowledge; there was nothing sent?

91 Question. Is it not a fact that their wardrobe was sent to such an extent that your families were in want of clothing before they left Abilene?

Answer. Why, yes; that is a fact.

Question. When were they sent?

Answer. That was after our trial; they didn't leave Abilene, you know, until about two months ago.

The said defendants also offered in evidence the questions and answers following of the last above-named witness, the same being a part of the cross-examination of said witness at the time of the taking of said deposition, & after the witness had testified in said deposition in chief that their wives were to remain at Abilene until their return; to which questions and answers the said plaintiff then and there objected, as being incompetent, irrelevant, and immaterial to any issue in this case; which objection was by the court overruled, and said questions and answers were permitted to go to the

jury as evidence in this case; to which ruling of the court the said plaintiffs then and there duly excepted, still except; and said exception is allowed:

Question. Was it not understood she was to take the train that night?

Answer. It was not.

92 Whereupon plaintiffs moved to strike out all of the last answers of witness, Ann Clark, as being incompetent, irrelevant, and immaterial, and for the other reasons suggested in the objection to the question; which motion was by the court overruled, and the testimony permitted to remain before the jury, the court stating that it was for the jury to determine whether the Mr. Weil testified to by the witness *to* was the plaintiff Weil or not; which ruling of the court the said plaintiffs then and there duly excepted, and still excepts; which exception is allowed.

After the plaintiffs and defendants both rested their case on the testimony, the plaintiff requested the court specifically to instruct the jury, as follows:

Instructions to Jury.

If the jury believe from the evidence that the goods in controversy were sold and delivered to Jones & Weil before any attachment was made or issued, that they took possession of the goods after the sale, that the change of possession was actual and visible, such a change as to indicate to persons who had previously done business at the store where the goods were that Max S. & Gus. Goldsmith had no longer possession or control of the goods, that the sale was for an approximate price, and for a valuable consideration paid by plaintiffs to Goldsmiths, the jury will and for the plaintiffs.

93 Which said instruction the court refused to give to the jury; to which refusal of the court to so charge the jury the plaintiffs then and there duly excepted, still except; and which exception is allowed.

The plaintiffs also requested the court specially to instruct the jury as follows:

If Goldsmith had purchased the goods on time, and those debts were not due for the goods, the goods were the absolute property of the Goldsmths, and they had a lawful right to sell and dispose of any and all of the goods in their possession without any regard to their creditors; and if they did so sell the goods to Jones & Weil before their debts were due, and plaintiffs took possession of them, the title of the goods passed to Jones & Weil, and were not, after such sale and delivery, liable to attachment for the debts of Goldsmith, and, if so attached, Jones & Weil could either replevy the goods or treat such seizure as a sale and sue for the value of the goods.

Which said instruction the court refused to give to the jury. To which said refusal of the court to so instruct the jury the plaintiffs then and — duly excepted, still except: and said exception is allowed.

The plaintiffs also requested the court to specially instruct the jury as follows:

94 The court charged the jury in part as follows: "Was this sale by the Goldsmiths to ths plaintiffs of this stock of goods so made with the intent of the contracting parties to hinder, delay, or defraud Goldsmiths' creditors, or was such the intent of the Goldsmiths, with the knowledge or belief of such intent by Jacob Weil, who acted for the plaintiffs, for notice to him is notice to the plaintiffs, and the law will not permit a person to assist a debtor to defraud his creditors out of their just debts. The law implies knowledge of such intent when facts and circumstances are within the finowledge of the purchaser, sufficient to excite the suspicion of a careful and prudent man and put him on inquiry, or to lead a person of ordinary perception to infer such intent."

To the giving of which said instruction by the court to the jury the said plaintiffs then and there duly excepted, and still except; which exception is allowed.

The court also charged the jury in part as follows: "If you find from the evidence that *that* in making this sale the Goldsmiths were doing so with the intent to so hinder, delay, or defraud their creditors, or any creditor, and the plaintiffs believed that such was their intention, or was in possession of *of* such facts and circumstances as would have excited the suspicion of a prudent man *man* and
95 put him on inquiry, then you must find for the defendants."

To the giving of which said instruction to the jury the plaintiffs then and there duly excepted, still except; and said exception is allowed.

The court also, in part, charged the jury as follows:

"If such was the intent of the Goldsmiths in making the sale, but the plaintiffs, nor either of them, had knowledge or belief of such intent, nor knowledge of such facts and circumstances as would excite the suspicion of a prudent, careful man, or put him on inquiry, then you will find for the plaintiffs."

To the giving of which said instruction to the jury the plaintiffs then and there duly excepted, still except; and which said exception is allowed.

The court also, in part, charged the jury as follows:

"In using the words hinder or delay creditors, the law means the placing of obstructions and difficulties in the way of the creditors enforcing and collecting their claims by due process of law. If the sale was made with the intent of enabling the Goldsmiths to put their property into money so their creditors should be delayed or hindered in collecting their just debts, or any part thereof, or to put it out of the reach of creditors, and compel them to compromise or release their claims for a part payment thereof, then the sale is
96 void, and the plaintiffs cannot recover."

To the giving of which said instruction to the jury the

said plaintiffs then and there duly excepted, still except; and said exception is allowed.

The court also instructed the jury in part as follows:

"It does appear from the testimony of one of the Goldsmith's about as follows: The firm have been buying large quantities of goods, and had become indebted in something over the amount of $20,000, and at the same time they were owing the wife of Max Goldsmith $2,000, and Solomon Goldsmith, the father-in-law of one of the parties, about $2,500, making between $4,000 and $5,000, in addition to their general indebtedness at that time; that they sold out their stock of goods for 60 per cent. on the dollar, and turned the proceeds of the goods over to Mrs. Dora Goldsmith, or sent them to Solomon Goldsmith through Mrs. Goldsmith, with the intent to prefer the wife and the old gentleman Goldsmith in their debt, that they should be paid ther indebtedness, and that the balance of the proceeds should remain in the hands of a friend, and not easily accessible to the creditors, and so fix it that the Goldsmiths could the more successfully dictate a settlement with their creditors,
97 and they did not mean the creditors should have anything unless they would take a percentage of their claims, and receipt to and release them in full. If this was the intention and purpose of the Goldsmiths in making this sale, it was fraudulent, as it was calculated and intended to hinder and delay creditors; and if Jones & Weil had notice or knowledge of facts or circumstances to excite suspicion and put them on inquiry, as before explained, of such intention, the sale is void."

To the giving of which said instruction to the jury the plaintiffs then and there duly excepted, still except; and which said exception is allowed.

The court also charged the jury in part as follows:

"In determining the intention and the motives of the Goldsmiths in making the sale every fact and circumstance connected with the transaction should be considered—their actions just before and immediately subsequent, as well as their acts and statements during the sale, should be considered. The price for which the goods were sold, the time and place and manner of making the invoices and bills of sale, also whether Goldsmiths had or had not carried away and appropriated large quantities of the goods to their own use, the disposition of the proceeds of the goods, &c., all tend to
98 throw light on the transaction. If the act was fraudulent on the part of the Goldsmiths, the plaintiffs must show clean hands to recover."

To the giving of which said instructions to the jury the plaintiffs then and there duly excepted, still except; and said exception is allowed.

The court also in part charged the jury as follows:

"A merchant, situated as was the Goldsmith-, largely indebted and insolvent, may be permitted to sell out his entire stock of goods for

a fair consideration, and the sale may be good in the hands of the purchaser, even if the vendor had the intent to defraud his creditors: provided, however, that the buyer was innocent of any fraudulent intent on his part, and did not know, believe, or have suspicion of the fraudulent intent of the vendor, or know of facts, circumstances, or actions on the part of the vendor which should excite the suspicion of a reasonably careful and prudent man."

To the giving of which said instruction to the jury the plaintiff then and there duly excepted, still except; and said exception is allowed.

The court also, in part, charged the jury as follows:

"As to what circumstances should be notice to a prudent man of the fraudulent intent is for you to determine in this case.
99 It is proper to consider in that connection the entire conduct of the Goldsmiths, in their dealing with J. Weil, in this transaction. Any over-anxiety shown on the part of Goldsmiths to sell out any offer of great reduction on the value of the goods, any disposition shown by the Goldsmiths to keep the sale a secret, any desire to make the sale in undue haste, out of business hours or in an unsual way, are all circumstances entitled to your consideration in solving the question of notice to Jacob Weil of a fraudulent intent on the part of the Goldsmiths.

To the giving of which said instruction to the jury, the plaintiff then and there duly excepted, still except; and said exception is allowed.

The court charged the jury also in part as follows:

Fraud is not to be presumed, but must be proven as any other fact, but the proof of fraud is usually made by circumstances. Men who enter into fraudulent transactions do not proclaim it to the world, but seek to cover it up and keep it secret, and so it is that the intent of the parties in this case is to be determined, not alone by the positive evidence of the contracting parties, but all the circumstances. In brief, if you find that the Goldsmiths had fraudu-
100 lent intent, then you have to determine did Weil know or believe, or ought he, as a reasonable or prudent man, to have known or believed, that the Goldsmiths were acting fraudulently, if he did know or believe, or ought to have known or believed, that the Goldsmiths were acting fraudulently, then the plaintiffs cannot recover.

To the giving of which said instruction to the jury the plaintiff then and there duly excepted, and still except; and said exception is allowed.

The court also, in part, charged the jury as follows:

If the jury believe that the debtors, Gus. and Max S. Goldsmith, sold the goods to the plaintiffs, with the intention to hinder, delay or defraud their creditors, then the plaintiffs, before they can recover, must show, by a preponderance of the evidence, that they

bought the goods for a good and valuable consideration, and that they acted in good faith in making said purchase. It is not sufficient that they paid a valuable consideration, even should you find that to be a fact. If plaintiff did not act in good faith in making the purchase, it is void, although they paid a full consideration.

To the giving of said instruction to the jury the plaintiffs then and there duly excepted, still except; and said exception is allowed.

101 And said cause having been argued by counsel for plaintiffs and defendants, and the jury being charged by the court, and the cause finally submitted to them, and having retired, under the charge of their sworn bailiff, to consider their verdict, after some time spent in deliberation, do return into court with their verdict and special findings, to wit:

Special Findings.

In the Circuit Court of the United States for the District of Kansas.

JONES & WEIL, Plaintiffs,

vs.

BENJAMIN F. SIMPSON & JOHN H. MAHAN, Defendants.

Special findings asked by the defendant.

1st. In making the sale of the goods in controversy, as claimed by the plaintiffs, did the Goldsmiths thereby intend to hinder and delay their creditors?—Yes.

2nd. In making the sale of the goods in controversy, as claimed by the plaintiffs, did the Goldsmiths intend to defraud their creditors?—Yes.

3rd. At the time Jacob Weil, one of the plaintiffs herein, bought the goods in controversy for the plaintiffs, as the plain-
102 tiffs claim, did said Jacob Weil know, or have good reason to believe, that the said Goldsmiths intended, by said sale, to hinder and delay their creditors?—Yes.

4th. At the time Jacob Weil so, as he claims, bought said goods, did he know, or have good reason to believe, that the said Goldsmiths intended, by said sale, to defraud their creditors?—Yes.

5th. At or before the time said Jacob Weil made said purchase, as aforesaid, had said Jacob Weil acquired knowledge of facts connected with the transactions of said G. & M. S. Goldsmith sufficient to put a reasonable man upon enquiry as to the intent of said Goldsmiths in making said sales?—Yes.

W. H. BUTTERFIELD, *Foreman.*

Endorsed: No. 3301. Special findings asked by def't. Filed Jan'y 12th, 1882. A. S. Thomas, clerk, by Geo. N. Holes, deputy.

Verdict.

Circuit Court of the United States, District of Kansas.

JAMES C. JONES and JACOB WEIL, Partners as Jones & Weil,
vs.
BENJAMIN F. SIMPSON. } 3301.

103 We, the jury in said entitled-action, find for the defendant, Benjamin F. Simpson.

W. H. BUTTERFIELD, *Foreman.*

Endorsed: No. 3301. Verdict. Filed Jan'y 12th, 1882. A. S. Thomas, clerk, by Geo. N. Holmes, deputy.

Special Findings.

In the Circuit Court of the United States for the District of Kansas.

JONES & WEIL, Plaintiffs, *vs.* GEORGE HOISINGTON, Def't.

Special findings asked by the defendant.

1st. In making the sale of the goods in controversy, as claimed by the plaintiffs, did the Goldsmiths thereby intend to hinder and delay their creditors?

Yes.

2nd. In making the sale of the goods in controversy, as claimed by the plaintiffs, did the Goldsmiths intend to defraud their creditors?

Yes.

3rd. At the time Jacob Weil, one of the plaintiffs herein, bought the goods in controversy, as the plaintiffs claim, did said Jacob Weil know or have good reason to believe that the said Goldsmiths intended by said sale to hinder and delay their creditors?.

Yes.

104 4th. At the time Jacob Weil so, as he claims, bought said goods, did he know or have good reason to believe that the said Goldsmiths intended by said sale to defraud their creditors.

Yes.

5th. At or before the time said Jacob Weil made such purchase, as aforesaid, had said Jacob Weil acquired knowledge of facts connected with the transactions of said G. & M. S. Goldsmith sufficient to put a reasonable man upon enquiry as to the intent of said Goldsmiths in making said sale?

Yes.

W. H. BUTTERFIELD, *Foreman.*

Endorsed: No. 3302. Special findings asked by def't. Filed Jan'y 12th, 1882. A. S. Thomas, clerk, by Geo. N. Holmes, deputy.

Verdict.

Circuit Court of the United States, District of Kansas.

JAMES C. JONES & JACOB WEIL, Partners as Jones & Weil,
vs.
GEORGE HOISINGTON. } 3302.

We, the jury in said entitled action, find for the defendant.
W. H. BUTTERFIELD, *Foreman.*

Endorsed: No. 3302. Verdict. Filed Jan'y 12th, 1882. A. S. Thomas, clerk, by Geo. N. Holmes, deputy.

105 Which verdicts were received by the court, and ordered filed as the verdicts in the case. Whereupon the plaintiffs made their motion for a new trial in said case, for the reasons in said motion stated, reference being thereto had for greater certainty; which said motion *were* overruled by the court, and judgment entered for the defendants, and against said plaintiffs, for the costs of said cases, taxed at $———; to all of which orders rulings and judgment of the court the said plaintiffs then and there duly excepted, and still except, and pray that this their bill of exceptions may be allowed, signed, and sealed by the judge, which is accordingly done; and upon their motion this bill of exceptions is ordered to be made a part of the record in this case.

C. G. FOSTER, *Judge.*

Endorsed: No. 3301. Jones & Weil *vs.* B. F. Simpson. 3302. Jones & Weil *vs.* George Hoisington. Bill of exception. Filed Feb. 7th, 1882. A. S. Thomas, clerk.

106 UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

I, A. S. Thomas, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and perfect copy from the record of all the proceedings in the suits of James C. Jones & Jacob Weil, partners as Jones & Weil, *vs.* Benjamin F. Simpson & John H. Mahan, No. 3301, and James C. Jones & Jacob Weil, partners as Jones & Weil, *vs.* George Hoisington, No. 3302, in said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Topeka, in said district of Kansas, this 3d day of March, A. D. 1882.

[SEAL.] A. S. THOMAS, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Kansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before

you, between James C. Jones and Jacob Weil, partners as Jones & Weil, plaintiffs, *vs.* Benjamin F. Simpson, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 9th day of February, A. D. 1882.

[SEAL.] A. S. THOMAS,
Clerk of the Circuit Court of the United States
for the District of Kansas.

Allowed.
C. G. FOSTER, *Judge.*

108 [Endorsed:] No. 3301. James C. Jones & Jacob Weil, partners as Jones & Weil, *vs.* Benjamin F. Simpson. Writ of error. Filed February 17, 1882. A. S. Thomas, clerk. E.

109 *Bond.*

Know all men by these presents, that we, W. E. Weil, of Salina, Kansas, and C. Hood, of Emporia, Kansas, and J. R. Mulvane, are held and firmly bound unto Benjamin F. Simpson in the full and just sum of two thousand (2,000) dollars, to be paid to the said Benjamin F. Simpson, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 16th day of February, 1882.

Whereas lately, at a term of the circuit court of the United States for the district of Kansas, in the 8th circuit, in a suit depending in said court between James C. Jones and Jacob Weil, partners as Jones and Weil, plaintiffs, and Benjamin F. Simpson, defendant, judgment was rendered against the said plaintiffs, and said plaintiffs having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Benjamin F. Simpson, citing and admonishing him to be and appear at a Supreme Court of the

United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said James C. Jones and Jacob Weil, partners as Jones and Weil,
110 shall prosecute their said writ of error to effect and answer all damages and costs if they shall fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

W. E. WEIL.
JOHN R. MULVANE.

UNITED STATES OF AMERICA, } ss:
District of Kansas, }

Personally appeared before me, the undersigned, a commissioner of the circuit court of the United States for the district of Kansas, W. E. Weil, who, being first duly sworn, says: That he is a resident of the said district of Kansas and is worth the sum of fifteen thousand dollars ($15,00-.00), over and above all his debts, liabilities, and exemptions.

W. E. WEIL.

Sworn and subscribed before me this 16th day of Feb'y, A. D. 1882.

E. L. NORTON,
Commissioner of the Circuit Court of the U. S. for the District of Kansas.

Bond approved.
C. G. FOSTER, *Judge.*

Endorsed: No. 3301. Jones & Weil *vs.* B. F. Simpson. Bond. Filed Feb. 17th, 1882. A. S. Thomas, clerk.

111 The United States of America to Benjamin F. Simpson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to writ of error filed in the clerk's office of the circuit court of the United States in and for the district of Kansas, wherein James C. Jones and Jacob Weil, partners as Jones & Weil, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness Honorable C. G. Foster, one of the judges of the circuit court of the United States in and for the district of Kansas, this 17th day of February, 1882.

C. G. FOSTER, *Judge.*

Service by copy of the foregoing citation acknowledged and accepted this 21st day of February, A. D. 1882.

MAHAN AND BURTON,
Attorneys of Record for Defendant, Benjamin F. Simpson.

112 [Endorsed:] No. 3301. Jones & Weil *vs.* B. F. Simpson Citation. Filed Feb. 23, 1882. A. S. Thomas, clerk, by Geo. N. Holmes, deputy.

113 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Kansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, between James C. Jones and Jacob Weil, partners as Jones & Weil, plaintiffs, *vs.* George Hoisington, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 9th day of February, A. D. 1882.

[SEAL.] A. S. THOMAS,
Clerk of the Circuit Court of the United States for the District of Kansas.

Allowed.
C. G. FOSTER, *Judge.*

114 [Endorsed:] No. 3302. James C. Jones and Jacob Weil, partners as Jones & Weil, plaintiffs in error, *vs.* George Hoisington, defendant in error. Writ of error. Filed February 17, 1882. A. S. Thomas, clerk. E.

115 *Bond.*

Know all men by these presents, that we, W. E. Weil, of Salina, Kansas, and C. Hood, of Emporia, Kansas, and J. R. Milvane, of Topeka, Ks., are held and firmly bound unto George Hoisington in the full and just sum of two thousand (2,000) dollars, to be paid to the said George Hoisington, his certain attorney, executors, admin-

istrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 16th day of February, A. D. 1882.

Whereas lately, at a term of the circuit court of the United States for the District of Kansas, in the 8th circuit, in a suit depending in said court between James C. Jones and Jacob Weil, partners as Jones & Weil, plaintiffs, and George Hoisington, defendant, judgment was rendered against the said plaintiffs, and said plaintiffs having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said George Hoisington, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said James C. Jones and Jacob Weil, partners as Jones and
116 Weil, shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

W. E. WEIL.
J. R. MULVANE.

UNITED STATES OF AMERICA, }
District of Kansas, } *ss:*

Personally appeared before me the undersigned, a commissioner of the circuit court of the United [States] for the district of Kansas, W. E. Weil, who being first duly sworn, says: That he is a resident of the said district of Kansas, and is worth the sum of fifteen thousand dollars over and above all his debts, liabilities, and exemptions.

W. E. WEIL.

Sworn and subscribed before me, this 16th day of February, A. D. 1882.

E. L. NORTON,
Commissioner of the Circuit Court of the U. S. for the District of Kansas.

Bond approved.
C. G. FOSTER, *Judge.*

Endorsed: No. 3302. Jones & Weil *vs.* George Hoisington. Bond. Filed Feb. 17th, 1882. A. S. Thomas, clerk.

117 The United States of America to George Hoisington, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States in and for the district of Kansas, wherein James C. Jones and Jacob Weil, partners as Jones & Weil, are plaintiffs in error, and you are

defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness Hon. C. G. Foster, one of the judges of the circuit court of the Unites States in and for the district of Kansas, this 17th day of February, 1882.

C. G. FOSTER, *Judge.*

Service by copy of the foregoing citation acknowledged and accepted this 21st day of February, A. D. 1882.

MAHAN & BURTON,
Attorneys of Record for Defendant, George Hoisington.

118 [Endorsed:] No. 3302. Jones & Weil *vs.* George Hoisington. Citation. Filed Feb. 23, 1882. A. S. Thomas, clerk, by Geo. N. Holmes, deputy.

Endorsed on cover: Kansas C. C. U. S. No. 357. James C. Jones and Jacob Weil, partners as Jones & Weil, plaintiffs in error, *vs.* Benjamin F. Simpson. No. 358. James C. Jones and Jacob Weil, partners as Jones & Weil, plaintiffs in error, *vs.* George Hoisington. Filed 10th October, 1882.

UNITED STATES

SUPREME COURT

CASE NO. 697

JAMES C. JONES AND JACOB WEIL, PARTNERS AS JONES AND WEIL, Plaintiffs in Error,

vs.

BENJAMIN F. SIMPSON, Defendant in Error.

CASE NO. 854.

JAMES C. JONES AND JACOB WEIL, PARTNERS AS JONES AND WEIL, Plaintiffs in Error,

vs.

GEORGE ROBINSON, Defendant in Error.

Error to the Circuit Court of the United States for the District of Kansas.

BRIEF FOR PLAINTIFFS IN ERROR.

F. G. MOHLER,
Attorney for Plaintiff in Error

UNITED STATES OF AMERICA.

SUPREME COURT.

CASE NO. 357.

JAMES C. JONES AND JACOB WEIL, PARTNERS AS JONES AND WEIL, PLAINTIFFS IN ERROR,

vs.

BENJAMIN F. SIMPSON, DEFENDANT IN ERROR.

CASE NO. 358.

JAMES C. JONES AND JACOB WEIL, PARTNERS AS JONES AND WEIL, PLAINTIFFS IN ERROR.

vs.

GEORGE HOISINGTON, DEFENDANT IN ERROR.

Error to the Circuit Court of the United States for the District of Kansas.

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT OF THE CASE.

May it please the Court:

These cases arose out of the seizure and appropriation of the goods of the plaintiffs by defendants, Simpson and Hoisington, respectively U. S. Marshal and Sheriff of Dickinson Co., Kansas, on writs of attachment issued out of the Circuit Court of the U. S. for the District of Kansas, and out of the District Court of Dickinson Co., Kansas, in suits against the plaintiffs' vendors, G. and M. S. Goldsmith. There was an actual and continued change of the possession of said goods, and the sale was for a suffi-

cient consideration. (See pages 31–2–3 printed record.) The plaintiffs sued to recover the value of the goods so seized and appropriated by the defendants. The defendants defended said actions on the ground that the sale by the Goldsmiths to the plaintiffs was made and obtained with intent to hinder, delay and defraud the creditors of the Goldsmiths. The only question in the cases was as to the *bona fides* of the transaction between plaintiffs and the Goldsmiths, their vendors. A concise statement of the facts is contained in the printed "Transcript of Record," pages 31, 32 and 33, to which the Court is respectfully referred. These cases, depending on the same state of facts, were by order of the Court consolidated for trial and were tried by one and the same jury, at one and the same time.

ASSIGNMENT OF ERRORS.

1. Admission of incompetent testimony by the Court below, offered by the defendants over the objections of the plaintiffs.

a. Testimony of witness Ann Clark, pages 33 and 34, printed record.

"Q. What did Gus. Goldsmith say to you at that time?"

"Answer. Gus. said they had sold the store and they were going away that evening on the train; for me not to mention it to any one, and not to let my son tell it, or let the servant girl go out that evening as he did not want it known."

"Question. Well, what did Gus. Goldsmith do that evening?"

"Answer. Gus. and Max Goldsmith took supper at my house in the evening of December 6th, 1880, with one Kelley and Simon Rothschild and his wife; they left my house between 6 and 7 o'clock that evening with Simon Rothschild, carrying two valises with them; they went away in a carriage."

"Question. You may state what (if anything) Hattie and Dora Goldsmith, the wives of Gus. and M. S. Goldsmith, did that Monday evening, Dec. 6th, 1880?"

"Answer. I started, with Dora and Hattie Goldsmith and Mrs. Simon Rothschild, to go to the depot at Abilene, about 10 o'clock on Monday night, December 6th, 1880. We did not go to the depot; we went as far as the court house; had about six satchels and valises. I had put up a lunch for Dora and Hattie Goldsmith; they said they were going to Cincinnati. We were stopped at the court house corner by some gentlemen, who said there was a great excitement at the depot; that they had better go back and stay all night. Hattie Goldsmith said we must go and meet the boys; the gentleman replied, he would get on the train and tell the boys how it is. I asked Hattie Goldsmith, Who is it that stops you on the way? She said it was Mr. Weil. They talked German part of the time. We went back; they stayed at my house with Mrs. Rothschilds all night. I could not recognize this gentleman myself; it was dark. He may have heard what Hattie Goldsmith said to me; think he was standing near enough to hear. When he stopped us he said he had been there watching for us an hour. Gus. and Max Goldsmith were not there.

b. Testimony of Simon Rothschild, pages 35-6, printed record.

"Question. State what you may know of the Goldsmiths leaving Abilene on the night of December 6th, 1880; where they went, and how they went."

"Answer. On Monday evening, December 6th, 1880, I hired a carriage and driver upon the request of Gus. Goldsmith to drive Gus. and Max S. Goldsmith and myself to Chapman's Creek, a station on the U. P. R. R., Kansas Division, about 12 miles east of Abilene. We drove down to Chapman's Creek, and when the night train going east about 10:30 came along we got on the cars at Chapman's Creek, Gus. and Max. S. Goldsmith going into the smoker, I taking the valises and going into the ladies' car to look for the Goldsmith women, whom the boys thought might be on the train. I met Jacob Weil in the ladies' car on his way to Junction City. I asked him where the Goldsmith women were; he said he had not seen them. I told him the boys were in the smoker, and he and I went in and found them there. There was some conversation there with the Goldsmiths. We, the Goldsmiths, Jacob Weil, and myself, took seats

together, facing each other. I think that Jacob Weil said something about a big crowd and excitement at the depot at Abilene. I said to the Goldsmiths, it was a good thing you did not take the cars at Abilene, or you might have been arrested like Porter & Smith. Jacob Weil expressed no surprise, and made no inquiry about what I meant by the Goldsmiths being arrested like Porter & Smith. After we had talked there some time Jacob Weil and the Goldsmiths got up and went towards the end of the car, and had some conversation that I could not hear, and then came back to their seats. After they returned to their seats Gus. Goldsmith handed me $25 to give to his wife Hattie when I should go back to Abilene. We all rode together talking, until we arrived at Junction City, where Jacob Weil and I got off; that was about 12 o'clock midnight. Weil and I got off at Junction City. I did not see Weil again until some time after the goods were attached. I returned to Abilene on the train 5 o'clock *morning* next morning. The Goldsmiths were also brought back at the same time, under arrest. I was with the Goldsmiths nearly all the afternoon of December 6th, 1880, and they were not in company with Jacob Weil during that time."

c. Testimony of R. S. Smith, page 36, printed record.

"Question. What compensation did your firm receive from the Goldsmiths for your services in the matter of this sale?"

"Answer. Some time after the bills of sale were executed on Monday, and the money paid by Jacob Weil, one of the Goldsmiths brought us a lot of accounts, amounting to about $350, to pay us for our advice and drawing the bills of sale, and, as I understood it, to defend them in any criminal action, if one were brought against them."

d. Testimony of Geo. Hoisington, defendant, pages 36-7, printed record.

"Question. State when and where, and under what circumstances you saw Gus. and Max S. Goldsmith on the night of December 6th, 1880."

"Answer. I went from Abilene east on the night train Monday night, December 6th, 1880. I was lying down in the smoker, with my hat over my face, at Chapman's

Creek. Gus. and Max S. Goldsmith got onto the cars, coming into the smoker. Afterwards Simon Rothschild and some gentleman came into the smoker where the Goldsmiths were; don't know who the gentlemen was; they seemed hilarious; they talked German; could not tell what they said, but some one of them said something about the sheriff. I arrested Gus. and M. S. Goldsmith some time after the train left Junction, between Junction and Manhattan, and took them back to Abilene on the next train. Simon Rothschild and the man whom I did not know got off at Junction City."

c. Testimony of Max S. Goldsmith, pages 37-43, printed record.

"Question. You say you negotiated these three notes:"

"Answer. Yes, sir."

"Question. Who did you negotiate them to?"

"Answer. To parties that we owed money to."

"Question. Name the parties."

"Answer. Well, Sol. Goldsmith and my wife."

"Question. Anybody else?"

"Answer. No, not as I remember; I gave them to my wife, all of them, and told her I suppose these will cover yours and father's claims."

"Question. When did you give them to her?"

"Answer. On the 6th day of December."

"Question. What time in the day?"

"Answer. About eleven o'clock. I could not mention exactly, 'cause we were very busy that day."

"Question. Did you state that you negotiated these drafts, too, as well as the notes?"

"A. Yes; we gave them the drafts and notes; I endorsed them to my wife, and told them to send them to the old gentleman and he should take his money out, and give us the balance."

"Q. Then you negotiated them all to your wife at the same time—drafts and notes?"

"A. Yes, sir; for the payment of hers and father's claims."

"Q. Were your father and your wife paid out of the proceeds of those drafts?"

"A. They were at the time."

"Q. What do you mean by saying "they were at the time?"

"A. That money has been given up again."
"Q. Given up by whom?"
"A. Well, by my wife and my father."
"Q. To whom?"
"A. To me."
"Q. For what purpose?"
"A. For the purpose of releasing us from under civil arrest."
"Q. How much did they give up?"
"A. I believe it was $2,600."
"Q. Was that all they had taken out of *of* the proceeds of the notes and drafts?"
"A. Well, I suppose it cost something while we were there didn't it?"
"Q. Answer my question, please."
"A. It is all they had left."
"Q. All they had left of what?"
"A. On advancing their money, besides what we expended of our own."
"Q. Advanced how; and for what purpose and when?"
"A. At the time we were located at the Junction City jail."
"Q. For what purpose?"
"A. Paying Mr. Kiehl and our hotel bills and sundry expenses, such as wines, liquors, segars, &c."
"Q. Do you pretend to say now that $2,600 was all there was left out of the proceeds of those notes and drafts, over and above paying your expenses?"
"A. All, to my knowledge. I never kept account of what money was on hand, or what money they expended, I did not care."
"Q. Did you have a statement at Junction City showing the various items of expenses and the amounts showing where all the money had gone to, except the $2,600?"
"A. I believe I did."
"Q. Do you know that statement to be correct?"
"A. Well, no—not exactly; I supposed it to be; I was not sure."
"Q. Didn't you make preparations to leave Kansas and come to Cincinnati at once?"
"A. No, sir; not to stay."
"Q. Didn't you start to Cincinnati by the K. P. on the night of the 6th of December?"

"A. Yes, sir.

"Q. What did you do with the outstanding accounts and notes pertaining to the Abilene house, Mr. Goldsmith?"

"A. I suppose some of them are outstanding yet, but some of them were given to Smith & Davidson, as a payment or part payment for their services."

"Q. When were these accouuts, you speak of, turned over to Smith and Davidson?"

"A. I believe on a Tuesday."

"Q. On a Tuesday?"

"A. Yes, sir; I am not sure; my partner attended to that."

"Q. Compensate them for what?"

"A. Well, for their services."

"Q. For their services in doing what?"

"A. Well, in assisting us in the sale, doing work connected with the sale."

"Q. Were they not paid their fees that Sunday night or Monday morning, when they did the work?"

"A. At that very time?"

"Q. Yes, sir."

"A. Well, they didn't receive any money from us that night."

"Q. Did you assign them the accounts that night?"

"A. Not that night."

"Q. Was it the next day?"

"A. Monday afternoon or Tuesday morning."

"Q. Monday night you started away?"

"A. Well, yes, it was Monday afternoon."

"Q. What had Smith and Davidson done at that time; what services had they performed for you?"

"Q. What services had they performed, up to that Monday afternoon, for you and your partner?"

"A. Well, they wrote out the bill of sale and attended to all the legal business which was necessary in a case of that kind."

"Q. You mean the sale of goods?"

"A. Yes, sir."

"Q. What did they do besides drawing the bill of sale?"

"A. Well, they advised us; they were our legal advisers."

"Q. With respect to what?"

"A. With respect to that bill of sale."

"Q. In what respect did they advise you concerning the bill of sale?"

"A. Well, they wrote out the bill of sale, attached the invoices, and that is about all."

"Q. What amount of notes and accounts did you assign to them for that service?"

"A. I really do not know what the accounts aggregated. Notes, we didn't have any outstanding.

"Q. It was all accounts?"

"A. I believe so: I cannot state; there might have been one or two notes."

"Q. How long did Jacob Weil stay at Abilene that time?"

"A. I believe he went away Monday."

"Q. What time on Monday?"

"A. I don't know; I was not around the store very much; I believe he went away Monday night and went down to Junction City."

"Q. Didn't you go on the same train that he did?"

"A. Yes, sir."

"Q. Didn't you see him?"

"A. I did."

"Q. Where did you get on the train?"

"A. At Chapman."

"Q. How did you go there?"

"A. I went there in a carriage."

"Q. Couldn't you have taken train at Abilene?"

"A. Yes, sir."

"Q. Who went with you?"

"A. Simon Rothschilds, my partner, and the butcher, I forget his name, in Abilene."

"Q. Mr. Cooper?"

"A. Yes."

"Q. Why did you go to Chapman by carriage?"

"A. We were advised to leave Abilene at once, not even to wait for the train."

"Q. What time did you start to Chapman?"

"A. Seven o'clock."

"Q. In the evening?"

"A. Yes, sir."

"Q. Did you meet Mr. Weil on the train?"

"A. Yes, sir."

"Q. At the time you were in the Junction City jail didn't you tell Bennett Keith, the sheriff of Davis county, Kansas, that Mr. Jones was to hold back on the payment of this $500 note on account of the goods having been attached, and that he was not to pay any expense with this; that you were to pay all the expenses; and that the note was placed in Paul Goldsmith's hands, and was not to be paid until Mr. Weil could see whether he was going to be put to any trouble or not?"

"A. No, sir; I never spoke to Mr. Weil about anything of that kind."

"Q. At the depot, at Topeka, at the time you were there making application to the supreme court for a writ of *habeas corpus*, did you not say, in the presence of Mr. Weil and W. S. Staubau, or either of them, that this note was placed in Paul Goldsmith's hands, and was not to be paid until Mr. Weil saw whether he was going to be put to any expense on account of litigation about these goods?"

"A. No, sir."

"Q. On Monday evening when you started to Cincinnati you say you found Mr. Weil on the train when you got on at Chapman station?"

"A. Yes, sir."

"Q. He got off at Junction City?"

"A. He did."

"Q. How far did you go?"

"A. Just a little bit further."

"Q. How much further?"

"A. About as far as Manhattan."

"Q. Why did you stop?"

"A. I was told to stop."

"Q. Who by?"

"A. Sheriff Hoisington and his partner."

"Q. Who do you mean by his partner?"

"A. Mr. Pierce."

"Q. The lawyer?"

"A. Yes, sir."

"Q. Of the firm of Hoffmire and Pierce?"

"A. Yes, sir."

"Q. Did the sheriff take you back?"

"A. He did."

"Q. Where to?"

"A. Abilene."

"Q. Where was Weil when you were taken back?"
"A. I suppose in Junction City."
"Q. At the time you left Abilene to go to Chapman to take the cars at Chapman, was it not the understanding that your wives were to take the train that night?"
"A. No, sir; not that I knew of."
"Q. Well, you ought to know."
"A. I made no understanding of that kind with my wife."
"Q. What arrangement did you make?"
"A. They were to stay there until we came back."
"Q. You say they were to go to the train that night?"
"A. Not that I know of."
"Q. Didn't they start to go to the train that night?"
"A. I don't know whether they did or not."
"Q. You don't know?"
"A. No."
"Q. You say it was the understanding they should stay until you came back?"
"A. Yes, sir; that was my understanding."
"Q. In assigning the accounts to Smith and Davidson, wasn't it understood that they were to defend you against any prosecution that might be begun against you?"
"A. When they received the accounts I believe that was included as a part of their services."

C. Testimony of Gus. Goldsmith, pages 43–6, printed record.

"Q. What did you do with the notes and drafts which you got from Mr. Weil on Monday?"
"A. I sent them to Cincinnati."
"Q. How?"
"A. By mail, at 10:30 in the morning?"
"Q. Who sent them?"
"A. I."
"Q. How were they endorsed?"
"A. To Dora Goldsmith."
"Q. Why were they endorsed to Dora Goldsmith?"
"A. Because we wanted her to take out what we owed her first."
"Q. Do you know Mr. Schreiber, agent for Friend Bros.?"
"A. Yes, sir; very well."
"Q. Do you remember the first bill of goods you

bought of him?"

"A. Yes, sir; indeed——"

"Q. Do you remember the time you contracted for the overcoats, in the fall of 1880?"

"A. Yes."

"Q. Was that the same time you bought the first bill?"

"A. Yes; that was in February, 1880."

"Q. Did you state to him at that time that you had $7,000 in cash capital in the business, and that you did not owe for any borrowed capital at all?"

"A. I never did; nor was I asked for any statement by him."

"Q. You made no statement of that kind?"

"A. No, sir; to the contrary he said he would sell us all the goods we wanted, no matter what the amount would be."

"Q. When did you learn that your expenses exceeded your profits?"

"A. As soon as there was no business; in the fall."

"Q. How much have you paid your creditors altogether out of that money?"

"A. As much as you saw we had left when we left Junction City."

"Q. Just answer my question."

"A. Well, I think it was about $2600; there was $2670 left and you kindly allowed us $70 to get home with."

"Q. That is all there was left of it?"

"A. Yes, sir."

"Q. What became of the other $6,000?"

"A. Well, a great part of it was squandered by rascally attorneys in Abilene."

"Q. Whose attorneys were they?"

"A. Well, our attorneys, of course; some of it was extorted."

"Q. Did any trunks or other baggage come on the train that morning?"

"A. Which morning?"

"Q. The morning of the 6th of December?"

"A. No, sir."

"Q. Did any trunks come on the evening train that night?"

"A. Not to my knowledge; I took a valise along."

"Q. Didn't your family's clothing come on that train?"

"A. Monday evening? No, sir; they stayed at Abilene."
"Q. Did their wardrobe and clothing remain there?"
"A. It did."
"Q. It was not started off at all?"
"A. Not to my knowledge; there was nothing sent?"
"Q. Is it not a fact that their wardrobe was sent to such an extent that your families were in want of clothing before they left Abilene?"
"A. Why, yes; that is a fact."
"Q. When were they sent?"
"A. That was after our trial; they didn't leave Abilene, you know, until about two months ago."
"Q. Was it not understood she was to take the train that night?"
"A. It was not."

2. In refusing to strike out the testimony of witness Ann Clark, on motion of plaintiffs. Page 46, printed record.

3. In charging the jury as in instructions found on pages 47-50, printed record.

4. In refusing new trial.

ARGUMENT.

The objection to the testimony of witnesses Ann Clark, Simon Rothschild, R. S. Smith and Geo. Hoisington, is that the testimony related only to acts and declarations of Gus. and Max S. Goldsmith, the plaintiffs' vendors, *after the consummation* of the sale and *in the absence* of plaintiffs, and it was permitted to go to the jury over the objections of the plaintiffs, upon the statement that the plaintiff, Jacob Weil, would be shown to be directly connected therewith, which was not shown. Such testimony could have but one effect: *i. e.* to mislead the jury and prejudice them against the plaintiffs. To these suits neither of the Goldsmiths were parties, nor were they at the time in possession of any of the goods; and we insist their acts and declarations subsequent to the sale and transfer were incompetent and highly prejudicial to plaintiffs.

Enders vs. Richards, 33 *Mo.*, 598–602.

State to use, &c. vs. Clendenin, 35 *Mo.*, 533.

Dodge et al. vs. Freemans &c. Co., 93 *U. S.*, 379.

The objection to the testimony of Max S. and Gus Goldsmith is two-fold.

First. The objection already urged as to the testimony of witnesses Ann Clark and others.

Second. The defendants, by offering the depositions of the Goldsmiths, made them their witnesses and the testimony objected to is in the nature of an impeachment of their own witnesses by the party offering this testimony, and has no reference whatever to anything with which it could be pretended even that plaintiffs had anything to do, or any knowledge of. The record shows there were three trials of these cases. In the first two the juries failed to agree. May it not be that this incompetent testimony was the casting weight in the last trial?

The testimony of witness Ann Clark, for the reasons already stated, should have been ruled out on the motion of plaintiffs.

The attention of the Court is specially called to the following testimony of witness Ann Clark, pages 34–5, printed record:

"Question. You may state what (if anything) Hattie and Dora Goldsmith, the wives of Gus. and M. S. Goldsmith, did that Monday evening, Dec. 6th, 1880?"

"Answer. I started, with Dora and Hattie Goldsmith and Mrs. Simon Rothschild, to go to the depot at Abilene, about 10 o'clock on Monday night, December 6th, 1880. We did not go to the depot; we went as far as the court-house; had about six satchels and valises. I had put up a lunch for Dora and Hattie Goldsmith; they said they were going to Cincinnati. We were stopped at the court-house corner by some gentlemen, who said that there was a great excitement at the depot; that they had better go back and stay all night. Hattie Goldsmith said we must go and meet the boys; the gentleman replied, he

would get on the train and tell the boys how it is. I asked Hattie Goldsmith, Who is it that stops you on the way? She said it was Mr. Weil. They talked German part of the time. We went back; they stayed at my house with Mrs. Rothschilds all night. I could not recognize this gentleman myself; it was dark. He may have heard what Hattie Goldsmith said to me; think he was standing near enough to hear. When he stopped us he said he had been there watching for us for over an hour. Gus. and Max Goldsmith were not there."

Is not this the baldest of hearsay, the statements and acts of parties not connected with the suit, nor with the transactions in any way, after the consummation of the sale and delivery of the goods? Can the Court estimate the injury done plaintiffs with the jury by this testimony? Yet this was suffered to go to the jury as competent testimony in these cases to affect the question of plaintiffs good faith in the purchase of the goods.

The law of Kansas bearing upon the transactions in this case is as follows:

"§ 2. Every gift, grant or conveyance of lands, tenements, hereditaments, rents goods or chattels, made or obtained with intent to hinder, delay or defraud creditors of their just and lawful debts or damages, shall be deemed utterly void and of no effect."

"§ 3. Every sale or conveyance of personal property unaccompanied by an actual and continued change of possession, shall be deemed to be void, as against * * * existing or subsequent creditors, until it is shown that such sale was made in good faith and upon sufficient consideration." Compiled Laws 1879, p. 464.

Under the facts in these cases § 2 only would be applicable, and under it the burden of proof is upon the defendants to show the fraud—fraud upon the part of the plaintiffs. To prove this claimed fraud the testimony of witnesses Ann Clark, Simon Rothschild, R. S. Smith, George Hoisington, Max S. Goldsmith and Gus. Gold-

smith, as set out in the bill of exceptions already cited was permitted to go to the jury over the objections of plaintiffs. It seems to us that for this error alone a new trial should be awarded the plaintiffs.

The Goldsmiths were of high financial standing, of excellent credit, and were not (to the knowledge of the plaintiffs) indebted to any amount, and the plaintiffs bought the goods, paying for them between eight and nine thousand dollars, which will be a total loss to them if the verdict in this case is sustained. It appears from the testimony of the Goldsmiths in the record in this case that they were deprived of their money by the action of the defendants' principals, *i. e.* the creditors of the Goldsmiths: and that they (the Goldsmiths) are now insolvent.

If a fraud was intended, or perpetrated by the Goldsmiths, the principals of the defendants placed the Goldsmiths in a situation to perpetrate it; and should the plaintiffs now be made to suffer except upon the most undoubted *competent* proof of their participation therein?

We do not make this argument as asking the Court to grant a new trial for insufficiency of evidence—for we understand we cannot ask this Court to review the action of the Court below on that question—but as bearing upon the proposition whether a verdict should be permitted to stand, if it may have been based, in part even, on testimony such as we have called to the attention of the Court.

The Supreme Court of Kansas, in "Baughman v. Penn, 6 Pacific Repr., 890," on the question of knowledge by the vendee of indebtedness of vendor, uses the following language:

"Where the validity of a sale of property is challenged on the ground that it was made to defraud the creditors of the vendor, the mere knowledge on the part of the vendee that the vendor was largely in debt will not render the sale fraudulent, although the purpose of the vendor

was to defraud his creditors unless the vendee was a participant in the fraud."

The plaintiffs insist that the following instructions given the jury, are erroneous and were calculated to mislead the jury:

1. "In using the words hinder or delay creditors, the law means the placing of obstructions and difficulties in the way of the creditors enforcing and collecting their claims by due process of law. If the sale was made with the intent of enabling the Goldsmiths to put their property into money so their creditors should be delayed or hindered in collecting their just debts, or any part thereof, or to put it out of the reach of creditors, and compel them to compromise or release their claims for a part payment thereof, then the sale is void, and the plaintiffs cannot recover."

See page 47, printed record.

This is erroneous in this that the jury may infer from this instruction that if the *Goldsmiths alone* had this intent—and obstructions and difficulties were placed in the way of the creditors enforcing and collecting their claims, as a result of the sale—then plaintiffs cannot recover, no matter how innocent they may have been of any knowledge of or concurrence in the intent of the Goldsmiths.

2. "In determining the intention and the motives of the Goldsmiths in making the sale every fact and circumstance connected with the transaction should be considered—their actions just before and immediately subsequent as well as their acts and statements during the sale should be considered. The price for which the goods were sold, the time and place and manner of making the invoices and bills of sale also whether Goldsmiths had or had not carried away and appropriated large quantities of the goods to their own use, the disposition of the proceeds of the goods, &c., all tend to throw light on the transaction. If the act was fraudulent on the part of the Goldsmiths, the plaintiffs must show clean hands to recover."

See page 48 printed record.

This is erroneous in this that the subsequent acts of the Goldsmiths are permitted to be considered as explaining the motives with which they made the sale, and also as casting the burden of proof upon the plaintiffs, as to their good faith in the purchase.

3. "A merchant, situated as was the Goldsmiths, largely indebted and insolvent, may be permitted to sell out his entire stock of goods for a fair consideration, and the sale may be good in the hands of the purchaser, even if the vendor had the intent to defraud his creditors: provided, however, that the buyer was innocent of any fraudulent intent on his part, and did not know, believe, or have suspicion of the fraudulent intent of the vendor, or know of facts, circumstances, or actions on the part of the vendor which should excite the suspicion of a reasonably carefnl and prudent man."

See page 48, printed record.

This instruction is erroneous as casting the burden of proof on the plaintiffs.

4. "As to what circumstances should be notice to a prudent man of the fraudulent intent is for you to determine in this case. It is proper to consider in that connection the entire conduct of the Goldsmiths, in their dealing with J. Weil, in this transaction. Any over-anxiety shown on the part of Goldsmiths to sell out any offer of great reduction on the value of the goods, any disposition shown by the Goldsmiths to keep the sale a secret, any desire to make the sale in undue haste, out of business hours or in an unusual way, are all circumstances entitled to your consideration in solving the question of notice to Jacob Weil of a fraudulent intent on the part of the Goldsmiths."

See page 49, printed record.

This instruction practically tells the jury that they must find that Jacob Weil, one of the plaintiffs, had notice of a fraudulent intent on the part of the Goldsmiths.

5. "Fraud is not to be presumed, but must be proven as any other fact, but the proof of fraud is usually made by circumstances. Men who enter into fraudulent trans-

actions do not proclaim it to the world, but seek to cover it up and keep it secret, and so it is that the intent of the parties in this case is to be determined, not alone by the positive evidence of the contracting parties, but all the circumstances. In brief, if you find that the Goldsmiths had fraudulent intent, then you have to determine did Weil know or believe, or ought he, as a reasonable or prudent man, to have known or believed, that the Goldsmiths were acting fraudulently, if he did know or believe, or ought to have known or believed, that the Goldsmiths were acting fraudulently, then the plaintiffs cannot recover."

See page 49, printed record.

This instruction is misleading in this that it practically tells the jury to take into consideration, in determining the question of fraud, the testimony of the witnesses Ann Clark and others, as to the acts and declarations of the Goldsmiths and their wives. We cannot exactly divine what the Court below meant by the terms "know" and "believe." If it meant that if plaintiffs *believed* without *knowledge*, that the fraud would be made out, then we say the instructions in which this language is used are misleading.

6. "If the jury believe that the debtors, Gus. and Max. S. Goldsmith, sold the goods to the plaintiffs, with the intention to hinder, delay, or defraud their creditors, then the plaintiffs, before they can recover, must show, by a preponderance of the evidence, that they bought the goods for a good and valuable consideration, and that they acted in good faith in making said purchase. It is not sufficient that they paid a valuable consideration, even should you find that to be a fact. If plaintiffs did not act in good faith in making the purchase, it is void, although they paid a full consideration."

See page 49, printed record.

This instruction is not good law, and its only effect could be to mislead the jury. It changes the burden of proof from the party alleging the fraud to the party denying it.

No matter how fraudulent the acts of the Goldsmiths

may have been, the verdict in the case should have been for the plaintiffs, unless their fraud, or their participation in the fraud of the Goldsmiths, was shown as a fact affirmatively by the testimony in the cases.

See *Astor v. Wells, et al.*, 4 *Wheat.*, 466.

Baughman v. Penn, 6 *Pac. Rep.*

For the various reasons suggested, and as a matter of justice to these plaintiffs, we confidently claim a reversal of the judgment of the Court below, and the awarding of a new trial to the plaintiffs.

Respectfully submitted,

J. G. MOHLER,

Attorney for Plaintiffs in Error.

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Supreme Court of the United States.

October Term 1885.

JONES AND WEIL *vs.* SIMPSON. } No. 88.

JONES AND WEIL *vs.* HOISINGTON. } No. 89.

Brief of Defendants in Error and Below.

STATEMENT OF THE CASE.

(References are to the marginal pages of the Record.)

During the year 1880, and prior thereto, the plaintiffs in the above consolidated cases were partners,
p. 60] doing business in West Las Animas, in Bent county, and also in La Junta county, both in the State of Colorado. In the spring of that year the plaintiff, Jacob Weil, first became acquainted with Max S. Goldsmith, a member of the firm of G. & M. S. Goldsmith, who did business in the towns of Abilene and Junction City, in the State of Kansas. This acquaintance was made at the town of Salina, in the same State, where W. E. Weil, a brother of the said Jacob, resided. In June and July, 1880, the plaintiffs bought goods of the said firm of G. &

M. S. Goldsmith from their Junction City store, which were shipped to the plaintiffs at West Las Animas. This appears to have been the only intercourse between the plaintiffs and the Goldsmiths prior to the 21st of November, 1880, when the former received a letter from
p. 61] the latter, requesting a member of the plaintiffs' firm to call at the store of the Goldsmiths in Junction City, as they (the Goldsmiths) wished to sell out their entire stock of goods, and that they would make it an object to the plaintiffs to come, examine, and purchase the said stock. In response to this letter Jacob Weil went to Junction City, reaching there on the morning of Saturday, December 4th, 1880; there he made inquiries as to the financial standing of the Goldsmiths and learned that it was good. He examined the stock, and then and there purchased all the goods of the said Goldsmiths in their stores at Junction City and also at Abilene. The goods at Junction City were scheduled on the said Saturday, were put in the possession of the said Jacob Weil,
p. 62] and the store-room was locked by him, and he retained the key. That same night the said Jacob Weil, accompanied by the said Max S. Goldsmith, went to Abilene, arriving there on the morning of Sunday, December 5th, 1880; during that day (Sunday) the goods in the store at Abilene were scheduled, which work was not completed until between midnight of that day and four o'clock the next morning (Monday), when two bills of sale for the said stocks of goods were made out in the law office of Smith & Davidson, in the said town of Abilene, and delivered to the said Jacob Weil, who then paid the stipulated price, as follows:

Bank draft for $4,816.35.
Two promissory notes for $1,250 each.
One " note " $500.00.

And the balance (48.76) in cash. The said
p. 63] sale was not fully consummated until about four

o'clock of the morning of Monday, December 6th, 1880. Then the names of the plaintiffs were placed over the store in Abilene, and they remained in posses-
p. 65] sion and control until the said goods were attached on the 11th day of the same month by the defendant Hoisington, sheriff of Dickenson county, Kansas. The goods in the Junction City store were removed, part to Abilene, and placed with the other goods in the store there, and the remainder were shipped to Topeka, Kansas, where they, as also all the goods then remaining at Abilene, were, on the day of the same month, attached by the defendant Simpson, United States marshal for the district of Kansas. The goods so seized were sold under the said writs of attachment; and the cases now here are brought by the plaintiffs against the said sheriff and marshal respectively to recover the value of the said goods and damages.

On the morning of Monday, December 6th, aforesaid, Gus. Goldsmith told his landlady, with whom he,
p. 67] with his wife and child, boarded in Abilene, that they had sold their store and were going away on the train that night. He requested her not to speak of what he said, nor to let her son tell of it, nor to let her servant go out that night, as he did not want it known. That evening the two Goldsmiths, with one Kelley, and Simon Rothschild and his wife, took supper at the house of this
p. 68] landlady. Between 6 and 7 o'clock that same evening the two Goldsmiths and Kelley and Simon Rothschild left the said house, carrying two valises, in a
p. 71] carriage. This carriage had been hired by Rothschild at the request of Gus. Goldsmith. They drove to Chapman's Creek, a station on the railroad about twelve miles west of Abilene, and there they took the 10.30 p. m. train for Cincinnati. After they got on the train the Goldsmiths went in the smoking car and Rothschild went into the ladies' car to look for the wives of the Goldsmiths,

who were expected on the same train. Jacob Weil was found in the ladies' car, but the wives were not there. They had started from the same landlady's house with
p. 69] her and Rothschild's wife about ten o'clock to take the said train at Abilene, having with them some six satchels and valises, but they were met on their way by a gentleman who told them that there was great excitement at the depot, and that they had better go back and stay all night. The wife of Gus. Goldsmith said that they must go to meet the boys. The gentleman replied that he would get on the train and tell the boys how it was. The landlady, who was with them, then asked Mrs. Gold-
p. 70] smith who the gentleman was, and she replied that it was Mr. Weil. He said that he had been waiting for a half hour when he stopped them. The wives of the Goldsmiths and Mrs. Rothschild went back with the landlady to her house and stayed there all night. Part of the conversation between Mrs. G. Goldsmith and Mr. Weil was carried on in German, which the landlady heard but could not understand.

Jacob Weil said something on the train to the
p. 71] Goldsmiths about there having been a big crowd and excitement at the depot in Abilene, whereupon Rothschild remarked that it was a good thing that the Goldsmiths had not taken the cars at Abilene, or they might have been arrested like *Porter and Smith*. Jacob Weil expressed no surprise at this remark, nor did he inquire what Rothschild meant by the remark about *Porter and Smith*. Then Jacob Weil and the Goldsmiths
p. 72] got up and left Rothschild and went to the end of the car, where they had some conversation together that he could not hear. When the train arrived at Junction City, about midnight, Jacob Weil and Rothschild got off, and Gus. Goldsmith gave Rothschild $25 to
p. 74] give to his (G.'s) wife at Abilene. The sheriff (Hoisington), who had come in pursuit of the Gold-

smiths on the same train from Abilene, arrested them shortly after and took them back to Abilene, where they arrived the next morning. They remained there under arrest until $2,600 were given up by the wife and father-in-law of Max S. Goldsmith, when they were re-
pp. 73, 74] leased. The bill of the Abilene lawyers, Smith and Davidson, was paid by $350 in accounts due from sundry persons to the Goldsmiths; this bill included such services as the said firm might be compelled to render to the Goldsmiths upon criminal
pp. 73,80,82,97] proceedings which, not without reason, were anticipated. It is evident from the testimony set out in the bill of exceptions, that this arrangement was made with these lawyers at the
pp. 63, 72] same time that the bills of sale were executed to Jacob Weil and the money paid by him, and that he knew of it.

pp. 76, 88] The drafts and promissory notes were endorsed to Dora Goldsmith, wife of Max S. Goldsmith, and so endorsed were mailed to
p. 87] her address at Cincinnati on the said Monday morning. The balance, of 6,000 odd dollars, was disposed of in some way unknown to the defendants. It is claimed by Gus. Goldsmith that it was squandered
p. 90] by certain attorneys at Abilene.

The firm of G. & M. S. Goldsmith aforesaid had been buying large quantities of goods prior to the alleged sale to the plaintiffs and were at the time of the said
p. 97] sale indebted in a sum exceeding $20,000 to creditors, besides the amounts claimed to be due to the wife of Max S. Goldsmith and to her father, amounting to $4,500.

On the 21st day of December, 1880, the plaintiffs brought their suits, consolidated as above, and on the
pp. 30. 57] trial of the same a series of special findings was made by the jury, upon which judgment was

entered in each case for the defendants, who had justified their respective seizures under the said writs of attachment issued at the suit of creditors of the said G. & Max A. Goldsmith. The cases so consolidated are now here to be heard in error upon the bill of exceptions filed therein.

Points and Authorities.

I. Before counsel discuss in detail the thirty-four separate exceptions embraced in the one general bill, it will be well to consider the issues of fact submitted to and passed on by the jury. The special findings in the cases, made at the request of the defendants and not as such objected to by the plaintiffs, cover three matters of inquiry, to wit:

(A) The intention of the Goldsmiths in making the sale of the goods in controversy.

(B) The knowledge by Jacob Weil of such intention.

(C) The knowledge by Jacob Weil of such facts in connection with the said sale as are in law sufficient to charge him with actual knowledge of such intention.

Let us now consider what evidence was legally competent upon such inquiry.

(A) In ascertaining the intent of the Goldsmiths it was competent to give in evidence their acts and declarations subsequent to the alleged sales, as well as those prior thereto or contemporaneous therewith.

Venable *v.* The United States Bank, 2 Peters, 119.

(B) In ascertaining the knowledge of and belief as to the intention of the Goldsmiths on the part of Jacob Weil, it was competent for the jury to consider all the acts and declarations both of the Goldsmiths and of the said Jacob Weil that tended to prove that the three were acting in collusion, whether the said acts and declarations were sub-

sequent to the sale, or contemporaneous therewith or prior thereto.

Bump on Fraudulent Conveyances, p. 584 (3d ed.)
Stewart *v.* Johnson, 18 N. J., 87.

(c) Upon the third inquiry it was competent for the jury to consider all the facts and circumstances known to the said Jacob Weil which were sufficient to excite the suspicions of a prudent man and put him on inquiry.

Clements *v.* Moore, 6 Wallace, 300.
Singer *v.* Jacobs, 3 McCreary, 638.
Stinson *v.* Hawkins, 13 Federal Reporter, 833.
Bartles *v.* Gibson, 17 Federal Reporter, 293.

II. Evidence as to the disposition made by the Goldsmiths of the purchase-money was competent in aid of the foregoing inquiries. "The payment of a full consideration and the appropriation of it to the payment of creditors repel the presumption arising from the grantee's knowledge of the debtor's intent to defeat some of his creditors. * * * When a cloud, however, rests upon the disposition made by the debtor of the money, the *bona fides* of the grantee must be clearly shown. If the circumstances are sufficient to put him on inquiry, he must see to it, and know that the money is applied to the payment of the grantor's debts, and cannot rely upon the debtor's declaration to so apply it."

Bump on Fraudulent Conveyances, p. 207, 3d ed.
Clements *v.* Moore, 6 Wallace, 299.
Avery *v.* Johann, 27 Wis., 246.
Green *v.* Tantum, 19 N. J. Eq., 105.

III. After the jury had found that the Goldsmiths had sold the said goods with a fraudulent intent, it was incumbent upon the plaintiffs to prove that they bought the said

goods for a valuable consideration, and without actual or implied knowledge of such intent.

Clements *v.* Moore, 6 Wallace, 315.
Stanton *v.* Green, 34 Miss., 576.
Alexander *v.* Todd, 1 Bond, 175.

IV. "In investigating an alleged fraud the relevancy of a given fact does not depend upon its force, but upon its bearing. Does it bear, either directly or indirectly, with any weight whatever on the main controversy or any material part of it? Not only is fraud subtle, but that ingredient of it which renders it fraudulent in fact, namely intention, is covered up in the breast, hidden away in the heart. Outward manifestations of it may be slow in appearing, and when they do appear may be dim and indistinct. To interpret their meaning, or the full meaning of any one of them, it may be necessary to bring them together and contemplate them all in one view. To do this, one has to be picked up here, another there, and so on until the collection is complete." Great latitude is allowed.

Waite on Fraudulent Conveyances, p. 287.
King *v.* Poole, 61 Georgia, 374.
Burdick *v.* Gill, 7 Fed. Rep., 668.
Winchester *v.* Charter, 102 Mass., 276.
Kemper *v.* Churchill, 8 Wallace, 369.
Rea *v.* Missouri, 17 Wallace, 544.

V. Counsel refer to the case of Singer *v.* Baer, (3 McCrary, 644,) as a forcible exposition of the law as to the kind and source of information which should be sought by one, honestly desiring to ascertain the solvency of a proposed vendor, under suspicious circumstances.

VI. Counsel call attention more particularly to the following facts of record, which clearly were evidence proper to be considered by the jury in determining the status of

Jacob Weil with respect to the Goldsmiths and their collusion in the alleged fraud.

After 10 o'clock on Monday morning, December 6th, 1880, the Goldsmiths and Jacob Weil appear to have separated; that evening the former take supper with Rothschild, who has, at the request of one of them, hired a carriage for their drive to the railroad station, twelve miles West of Abilene, in time to take the night train East; the wives of the Goldsmiths and also Mrs. Rothschild start with their baggage to take the same train at the depot in Abilene; on their way there they are stopped by a man, who tells them that he has been waiting for them a half hour; that there is much excitement at the depot, and that they had better go back and stay all night at Abilene, which they do; this man, who is Mr. Weil, as the wife of one of the Goldsmiths says at the time, also says that he will see "the boys," meaning thereby the husbands of the three women on the train, and will explain matters to them. Jacob Weil is found on the same train in conversation with the three men; he tells them that there has been excitement at the depot in Abilene; he has some secret conference with the Goldsmiths; then he and Rothschild get off the train at Junction City, and one of the Goldsmiths gives Rothschild money to carry back to his (G's) wife; a few minutes after the Goldsmiths are arrested. This evidence is relied upon as sufficient to establish a concert of action between the Goldsmiths and Jacob Weil subsequent to the formal consummation of the alleged sale, and the actions and declarations of all three are to be taken as parts of the *res gestæ*. It is also proper to consider in this connection the flight of the Goldsmiths as advised, by whom does not directly appear, (R. p. 82,) and the payment of the firm of Abilene lawyers in advance for future services to be rendered should occasion arise in criminal proceedings against the Goldsmiths with respect to the transactions connected with the said sale.

Consideration of the Bill of Exceptions.

The bill of exceptions contains, as has been said, 34 exceptions grouped in one bill; as they are not numbered in the record, counsel will refer to them in the order in which they are printed.

The exceptions—which occur in the following order, to wit: 1, 2, 4, 6, 7, 8, 10, 11, 12, 14, 16, 17 and 19—all relate to what the Goldsmiths said and did from the time of the alleged consummation of the sale at 4 o'clock A. M. of the said Monday, Dec. 30th, until their arrest; this testimony was competent for several reasons.

1st. Because they, the said Goldsmiths, were examined as witnesses in the case.

2d. Because their intent in the transactions connected with the said sale was a matter of inquiry, and was specially to be found by the jury.

3d. And principally because there was abundant evidence of collusion between the Goldsmiths and Jacob Weil from the inception of the sale until he left the cars at Junction City with Rothschild at midnight of that same Monday.

The exception taken third in order relates to what the wives of the Goldsmiths did on the evening of the same Monday; it is submitted that this testimony was competent for two reasons.

1st. Because it tended to show the sudden flight of the debtors with their household and baggage, and was therefore a part of the whole transaction or *res gestæ;* and

2d. Because there was evidence to show that Jacob Weil was in collusion with the Goldsmiths, and was waiting to warn their wives, and that he went from them to the train which carried him to Chapman, where the husbands and Rothschild got on the same train and communicated with him.

Exception fifth in order relates to the compensation paid

to this firm of midnight lawyers, who accepted pay for contingent criminal services, in connection with this sale, in accounts of the debtors transferred to them. This testimony was competent—

1st. Because it was for the jury to say how far it implicated Jacob Weil in collusive action with the Goldsmiths.

2d. Because it was a part of the *res gestæ;* and

3d. Because it tended to show what reasons of inquiry and suspicion were suggested to Jacob Weil in this connection.

Exception ninth in order relates to the disposition of the alleged purchase money. This was competent as illustrating the intent of the Goldsmiths; the *bona fides* of Jacob Weil, when his duty to see to the application of the purchase money is considered under the decision in Clements *v.* Moore; and also his intent generally; and, finally, because it tended to show that the alleged debts due the wife and father-in-law of the said M. S. Goldsmith were fictitious.

Exceptions taken in the following order, to wit, 13, 15, 18 and 20, were as to matters which the witness denied, and in regard to which he was not contradicted; they are, therefore, unimportant, since his answers stand in his favor, and bound the defendants.

Exception 21 is controlled by exceptions 1, 2 and 3; if they cannot be sustained, neither can this exception, based upon the refusal of the court to strike out the answers to the giving of which this last exception was taken.

Exceptions 22 and 23 are to the refusal of the court to grant two prayers of the plaintiffs. These prayers, omitting as they do all reference to the question of fraud, are manifestly incorrect as they stand, and should not have been given. It is not necessary to discuss them.

Exceptions from 24 to 33, both inclusive, are to certain portions of the charge of the court. The exceptions do not say that they set out either the whole charge or all the